UNIVERSITY OF ALBERTA

DOMESTIC VIOLENCE: AN ANALYSIS OF THE LAWS AND POLICIES IN NIGERIA

by

Subuola Mojoyinola Majekodunmi ©

A thesis submitted to the Faculty of Graduate Studies and Research in partial fulfilment of the requirements for the degree of Master of Laws.

Faculty of Law

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This thesis is dedicated to -

The Almighty God who gave me the wisdom and strength to complete it, and to the Memory of my Late father ***Chief Edward Omololu Majekodunmi***

ABSTRACT

This thesis aims at identifying the fundamental human rights of a Nigerian woman against domestic violence by using as authoritative the 1999 Constitution of the Federal Republic of Nigeria and international instruments such as women's Conventions adopted as law in Nigeria. It establishes that a change in laws will not suffice by itself to solve the problem of domestic violence and to reduce spousal battery in Nigeria. This thesis further contends that the laws in Nigeria are presently available for the protection of victims of domestic violence, and that the only hindrance to actualising these rights consists of the lack of awareness of the existence of their rights against this crime and the socio-cultural stereotypes that surrounds gender- related issues in Nigeria.

In recognising this, this thesis also considers practical alternative modes of addressing spousal abuse in Nigeria. To this end, it considers the method adopted by countries such as Canada and the United States.

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INTRODUCTION

Violence against women has attracted international attention due to its alarming increase and has, thus, been recognised as a human rights violation. It violates and nullifies the fundamental human rights of women throughout the world. Violence against women results from social (patriarchal), religious and cultural ideologies that accord to the male gender supremacy and domination over the women.

The United Nations General Assembly recognised violence against women to be a "manifestation of historically unequal power relations between men and women,"[1] which ultimately results in discrimination against women. It passed the *Declaration on the Elimination of Violence Against Women*. Despite the ratification of the Convention as well as the popular enthusiasm for it in many nations, the declaration remains merely a declaration, in many African countries, including Nigeria. This act of non-compliance with the provisions of the Convention has further lead to adverse discrimination against women.

The failure of state intervention in Nigeria to address domestic violence in policy and legal terms has meant the neglect of the plight of women as a population. This phenomenon derives not only from historically unequal structural relationships between men and women, but also from its relationship with the entire edifice and mentality of governance. Understanding this relationship requires unmasking and analysing the interaction between historical and prevailing mentalities of governance, and the governance of women as a population and the problem of domestic violence. In other words, given that domestic violence has been a major problem affecting women over the years, how have the regulatory practices changed? What are the forms, contents, contexts, and constitutionality of these regulatory practices? These issues motivate this study. Addressing these questions will clarify the legal framework and principles that guide these regulatory practices. Advocacy and legal reforms demand this clarification and require, first, appreciation of the extent and scope of domestic violence in Nigeria.

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[1] Declaration on the Elimination of Violence Against Women G.A. res. 48/104, 48 U.N. GAOR SUPP. (No.49) at 217, U.N DOC. A/48/49 (1993).

I. Statement of the Problem

In Nigeria the family unit is regarded as sacred. It is the woman's duty to preserve the home, at all cost. Any act of violence meted out to her is often endured for fear of social ridicule, or she would be taken to have failed in her duties. The man is to use any amount of control to check his wife, and any restraint by him would be taken as an indication of weakness. Nigerian Laws entrench this cultural stereotype.

Domestic violence is an area where women's rights are routinely abused and where women have little legal recourse. In most African societies such abuse manifests itself in forms of female genital mutilation, child marriages and labour, rape of women and girls, child slavery, suppression of dissent in the family, wife battering, and widowhood rituals. This study restricts to battering relationships. This issue lacks adequate recognition in Nigeria despite its implication for human rights. According to Omorodion (1992), cases of domestic violence increased by 100% between 1982 and 1988.[2] Lack of published data on domestic violence tends to mask the reality of its scope, rate, intensity and incidence in Nigeria.

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[2] F.Omorodion, "The Social Context of Wife Battering" in Mere Nakateregga Kisekka ed., *Women's Health Issues in Nigeria* (Tamaza Publishing Company limited, 1992) 169 -181.

Yet, public opinion, media attention and increasing attention of state government, judges it that, domestic violence is alarming in Nigeria. More importantly, in a recent statistic released, the Canadian and United State Immigration departments report that, most African women applying for refugee status and asylum do so on grounds of domestic violence and the absence of effective legal protection from it. As a result, domestic violence has induced migration of women from Africa thereby exposing them to uncertainties despite the potency of grassroots's advocacy and legal instruments in some democratic countries in Africa. This phenomenon places enormous responsibility on the legal system to have laws at protecting women more adequate. Still, no enabling law protects women from violence. For instance, Section 55 of the Penal Code of Northern Nigeria exacerbates matters by placing the discipline of women and children in the hands of husbands, thereby encouraging women to suffer in silence. Asserting their legal rights in the face of naked provisions to protect them would definitely be detrimental to them. What does the *Matrimonial Property Act*[3] offer a woman who leaves an abusive relationship after slaving in her home? This depends on the form of marriage contracted: either under English or Customary law.

Nigeria being a developing country, a greater section of the populace are uneducated and dwell in poverty. Education is important for the issue of violence against women in Nigeria, since it generally raises their awareness of legal and constitutional rights. Some women have made considerable individual progress in academic and business world, but women remain discriminated against in their access to education for social and economic reasons. In Northern Nigeria, Muslim communities favour boys over girls in deciding which child to enrol in schools. In the South, economic hardship also restricts many families' ability to send girls to school; instead they are directed to commercial activities such as trading and street merchandising.

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[3] Laws of the Federation of Nigeria Cap 220 1990

More importantly, presently, only one shelter exists in Lagos (Western Nigeria) for victims of domestic violence and their children. Many factors are responsible for this, including lack of sponsorship, lack of trained personnel, and the need to protect family privacy. If however, the government decided to treat this crime as a grievous offence, then facilities to deal with it would receive funding. The family unit is one which deserves much attention. In Nigeria, it is held in high esteem, and if all is done to protect it, this would go far to reduce crime in the nation. The government needs to be sensitized and motivated to enact and promote both the law and the policy reforms that would create an awareness of the offence of domestic violence and thereafter deter it.

Poor or no awareness of the crime of domestic violence has resulted in the lack of adequate data on the incidence of domestic violence. The attitude of law enforcement agents and sometimes the victims has resulted in little or no prosecution of the offence: it is considered a mere matrimonial dispute, to be resolved between the parties.

Asserting their rights due to the "codified and uncodified" norms work against women. This situation, however, does not mean that some women have kept silent about this injustice. Many non-governmental organisations (hereinafter called NGO) in Nigeria have brought this violation of women's rights to light, this has had little impact in the Nigerian society. The mentality of the people still remains. The women are not bold enough to assert their rights and they shy away from reporting to the law enforcement agents. Some women due to their economic dependency on the men, perceive wife battering as acceptable discipline. In some cases, where there has been grievous assault, which often leads to a criminal prosecution, women often plead for leniency on behalf of their husband, in order to prevent the men from being incarcerated. Other suitable methods ought to be examined since a criminal charge might not be effective.

II. The Objectives of The Study

The objectives of this study are threefold: to examine the incidence of domestic violence in Nigeria; to unravel further the legal frame work and policy alternatives around domestic violence in Nigeria, and, lastly, to examine the mentality or ideologies behind the legal framework. To achieve these objectives, the legal and policy thrusts of Canada are reviewed in the Nigerian context, so as to offer adequate reforms to the Nigerian government.

However, for a proper appreciation and understanding of this research, it is important to recall the history of Nigeria and its culture.

III. Introduction to Nigeria

Nigeria covers 913,072.64 square kilometres in West Africa; located on the gulf of Guinea, it shares its western border with Benin, its eastern border with Cameroon, with Niger to its North and Chad in the North-East.[4] The local currency is the Naira. With a population estimated at 120 million, Nigeria is the most populous country in Africa and has over 400 ethnic groups, with each having their own peculiar form of cultural organisation in terms of language and dialect, social customs and belief.[5] Nigeria is also Africa's leading oil producer. The capital is the Federal Capital Territory Abuja; its major cities include Lagos (the commercial capital), Ibadan, Kano, Ogbomosho, Abeokuta, Ilorin and Port Harcourt. English is the official language in Nigeria; however, over 250 other languages are spoken including Hausa,Yoruba and Ibo. The major ethnic groups are the Hausa, Igbo and Yoruba .No single tribe encompasses a majority of the population. In Africa, Nigeria seems to stand on her own due to her size, diverseness of language, the development of resources both human and material and the vast increase in the population of the people.[6] In this research references will be made to the major ethnic groups in Nigeria, it is therefore necessary to state a brief introduction to the Nigerian culture.

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[4] John Njoku, *The Igbos of Nigeria: Ancient Rites, Changes, and Survival*, (United Kingdom: The Edwin Mellen Press, Ltd, 1990) at 3.

IV. The Yorubas

The term "Yoruba" refers to the people, the language spoken by this tribe, and can also be used to refer to the geographical location of this tribe commonly referred to as "Yoruba Land". The Yoruba's are mainly found in the South-Western part of Nigeria, which includes Lagos, Ogun, Ekiti, Ondo state and the South- Eastern parts of kwara state.[7]

The various tribes in Yoruba land trace their origin from Oduduwa, the father of Yoruba land and the founder of Ile-Ife whence Yoruba civilisation emerged.[8] Thus Ile- Ife is regarded not only as the cradle of Yoruba people, but also where the religion common to them originated, since Oduduwa was the sacred king from whom Yoruba civilisation began.[9] His seven sons are believed to have founded the other Yoruba kingdoms.

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[5] Biodun Adediran, "The Origins of Nigerian peoples" in Richard Olaniyan ed. *Nigerian History and Culture* (England: Longman Group Limited, 1985) at 10.

[6] C.R. Niven, *Nigeria: Outline of a Colony*, (NewYork: Thomas Nelson and sons ltd) at 1.

[7] J.S. Eades, *The Yoruba Today*, (Cambridge: Cambridge University Press, 1980) at 1.

[8] I.A. Akinjogbin, B. Adediran, "Pre-colonial Nigeria: West of the Niger" in R. Olaniyan ed., *Nigerian History and Culture*" (England: Longman Group Limited, 1985) at 36.

Facial marks distinguish the various Yoruba tribes. The head of government for the community of Yoruba tribes is the oba (divine king). Prior to colonial rule, the basic means of subsistence amongst the Yoruba's was farming; this still obtains today. Cocoa is Nigeria's largest cash crop; Ondo state which is part of Yoruba land is one of the largest producers of cocoa. Monogamy amongst the Yoruba's was borne out of necessity, since this way of life was more adaptable for the rich. The modern Yoruba's are known for their extravagant life style and polygamy seems to be rule in most households.

V. The Igbos

The word "Igbo" refers to the "speaker of the language, their area of occupation and the language spoken by this group of people."[10] The Igbo's are mostly found in the Eastern part of Nigeria, and occupy a total area of 15,800 square miles.[11] The Igbo people have been found to be mobile (but not nomadic) and are seen in almost every part of Nigeria, African and some countries abroad due to the preference to trade: hence they are referred to as the "go - and - get people."[12] Structurally, the Igbo culture has an egalitarian social pattern, but practice does not conform to it, within the family, authority is vested in the first son usually referred to as "Opara."[13] Elders in the Igbo community are respected and honoured.

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[9] J.A. Atanda, *An Introduction to Yoruba History,* (Ibadan (Nigeria): Ibadan University Press,1980) at 7.

[10] Supra note 4 at 17.

[11] Ibid. at 16.

[12] Ibid. at 15.

The Igbo people have had a significant effect on Nigerian history. The Aba women's riot can be referred to as the first phase of the liberation of African women, and brought about the exemption of women on rural farms from tax imposition, which was then restricted to salaried earners.[14] Also, the civil war in Nigeria broke out when the Eastern region, under Colonel Ojuku, declared itself the independent and sovereign Republic of Biafra on May 30th 1967.[15] Historically, Igbo women held various political positions. After the colonialist infiltration into the heart of Igbo land, female administrative titles gradually ceased.[16] Presently, women receive chieftaincy titles, but this is for the roles they play in the communities and markets and not for administrative purposes.[17] The Igbos today allege marginalisation of their tribe under the subsequent and present administration due to the structural organisation and composition of Nigeria.

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[13] Ibid. at 29

[14] Van Allen J, "Sitting on a Man: Colonialism and the Lost of Political Institution of Igbo Women"
(1972)6 Can. J. Afr. Std. at 172 -178.

[15] Ibid. at 149.

[16] Ibid. at 20

[17] Ibid.

The Hausas

The Hausa's are made up of Sudanese people whose fusion form an area occupied by Hausa people now referred to as Hausaland.[18] Thirty- eight percent of all Hausas are in the North and North-West regions of Nigeria. This region extends from Nigeria's western boundary eastward to Borno state and into much of the territory of southern Niger. Although English is recognised as Nigeria's official language, Hausa, is rapidly becoming the chief language of Northern Nigeria. Only about half of the population are literate. Women usually do not work in fields, but are responsible for preparing meals at home. Many Hausa women are confined to their homes, except for visits to relatives, ceremonies and the workplace, and seldom receive access to western education. The present administration is, however, making efforts to ensure that parents in the North do not deny to their female children access to western education.

The predominate religion practised by the Hausa is Islam. In October 1999, Zamfara state became the first Nigerian state to adopt Islamic law. Many other Northern states have followed suit. The issue of religion has been a sensitive issue in Nigeria. Muslim northerners, mainly Hausa-Fulani, ruled Nigeria most of the years since independence in 1960.

The governorship of Sir. Frederick Lugard lead to the creation of Nigeria in 1914 with the amalgamation of the protectorates of Northern and Southern Nigeria.[19] This administration further divided Nigeria into three unequal political regions: the North, being the largest and most populous where the Muslim Hausa and Fulani are mostly found; the West, which presently is dominated by the Yoruba, and the East, where 60% of the Christian Igbo form the largest ethnic groups.[20]

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[18] S. Rakov, "Ethnicity in Nigeria" online: http://www.scholars.nus.edu.sg/landow/post/nigeria/ethnicity.html (date assessed: 7th October 2002).

[19] Reuben K. Udo, *Geographical Regions of Nigeria*, (London: Heinemann Educational Books Ltd, 1970) at 1.

Nigeria gained independence in 1960. As a result of this, a new federal structure was adopted in 1968 which led to the creation of 12 states which was further increased to 19 in 1976.[21] A Federal Capital Territory was established in 1979, and, by 1996, the number of states increased to 36, as obtains presently.[22] Independence freed Nigeria from colonial rule, but still had its disappointments. Firstly, the unfair trading terms adopted during the colonial period between Nigeria and other developed Western European countries were not altered after independence, this slowed the pace of Nigeria's economic progress.[23] Secondly, Nigeria and her neighbours disputed borders, thirdly, Nigeria was weakened both by the Biafran civil war of 1967 - 70, in which various infrastructure were destroyed and , also by successive military coups.[24] Nonetheless, Nigeria can still count her gains from independence. Education was expanded, road and air transport attracted a great deal of investment, and the oil boomed in the later half of the 1970, all these helped in improving her economy.

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[20] United Nations High Commissioner for Refugees, Background paper on Refugees and Asylum seekers from Nigeria, Centre for Documentation and research. Geneva, January 2000 at 1.

[21] M.A. Kwamena-poh, "Evolution of Modern Nigeria",, in O.Y Oyeneye & M.O. Shoremi eds., *Nigerian Life and Culture* (Nigeria: Ogun State University , 1985) at 105 - 113.

[22] Ibid.

[23] Ibid. at 105 -106.

[24] Ibid.

Nigeria became a republic in 1963, with its first president late Dr. Nnamdi Azikiwe. Since then, the nation has suffered from series of military coups; in the thirty-one years of military rule, human rights violations took various forms.[25]

Nigeria is a transitional state, having emerged from military rule to a democratic government. During the regime of General Sani Abacha president from 1993- 1998, many Nigerians suffered human rights violations. His sudden death changed the political landscape, and led Nigeria into democratic rule. General Adusalam Abubakar, replaced General Abacha, and handed over power to a democratically elected president, General Olusegun Obasanjo in May 1999. (a former military ruler, who had handed over power to an elected president in 1979).

In Nigeria today, since General Olusegun Obasanjo assumed power, progress has been made towards changes in the country, including women and children's rights, which hitherto laid dormant in Nigeria. Various policies and laws protecting the rights of women, and female children are in the process of being passed into law . These include the "Charter for Womanhood" and the "Teenage Sexual Act". The Chapters below will address the contents of these policies.

The new democratic government has through the efforts of various NGO's, taken a positive step in solving the problem of violence against women by acknowledging that this problem exists and that this group of people in Nigeria are the most violated.

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[25] A Human Rights panel has been set up by the present administration to look into various Human Rights violations during the regime of the past Head of State Late General Sani Abacha. This panel is chaired by Rtd. Justice Chukwdifo Oputa.

VI. Abbreviations

In this thesis, the following abbreviations are used:

a. **NGO** - Non- Governmental Organisation

b. **FSP** - Family Support Programme.

c. **VVF** - Vescio Vaginal Fistula.

d. **RVF** - Recto Vaginal Fistula

e. **FGM** - Female Genital Mutilation.

f. **CEDAW** - Convention on the Elimination of all Forms of Discrimination Against Women.

g. **SAP** - Structural Adjustment Program.

h. **UNCSW** - United Nation Commission on the Status of Women.

i. **ECOSOC** - United Nation Economic and Social Council.

j. **WOTCLEF** - Women Trafficking and Child Labour Eradication Foundation.

VIII. Appendix

The Provisions of Chapter IV (Fundamental Human Rights) of the 1999 Constitution of the Federal Republic of Nigeria is attached to this thesis as an appendix.

CHAPTER 1

DOMESTIC VIOLENCE IN NIGERIA

I. Introduction

Mojubaolu Olufunke Okome[1] characterises African women as "juridical minors" who are under the care of their fathers during the early stages of their lives; this duty of care is then transferred to their husbands after marriage .[2] Traditionally, they are property of the father of birth, and of the husband on the payment of dowry; and are made to feel inferior to men. Despite the prevalence of this tradition, other writers still note the independence of African women, especially in trade.[3] Others have stated that the roles played by both African men and women as complementary.[4] Yet, the classification of the characterised role of African women depends on the era in question. Much attention has recently been directed to the liberation of African women from their cultural ties.

Domestic violence in Sub-Saharan African countries has its roots, amongst other factors, in the cultural traditions of the people. Nigeria is blessed with a rich culture with over four hundred ethnic groups each possessing its own peculiar beliefs and traditions.

---

[1] Assistant Professor Department of Political Science, Brooklyn College, New York.

[2] N. Sudarkasa, "The Status of Women in Indigenous African Societies"in R. Terborg-Penn, A. Benton Rushing, eds., *Women in Africa and the African Diaspora* (Washington, DC: Howard University Press, 1996) at 73.

[3] Ibid.

[4] D. Paulme, *Women in Tropical Africa* (Berkeley: University of California Press, 1963) Introduction, at 1- 16.

Unfortunately, some of these traditions are discriminatory towards women, and account for the persistent domestic violence against them. The women might not perceive these discriminatory traditional practises as violence, but rather as part of the tradition that must be fulfilled.[5] Nigeria is basically a patrilineal society. Amongst the various cultural groups in Nigeria, descent and inheritance pass to the male side of the family only. A matrilineal system is found amongst the Yako in Cross River State and amongst the Ohafia in Imo State, under which "inheritance passes through the female side of the family."[6]

In contemporary Nigeria some women have made considerable individual progress in all sectors of the society. Despite this, a greater percentage of women are still being discriminated against in areas such as the acquisition of land (in some traditional societies), leasing of properties (single women are believed not to be credit-worthy),[7] politics and marriage (in some cultures girls are not given the right to consent in their choice of partners, husbands are chosen for them and occasionally, older men). Recently, the Customary Courts in Western Nigeria have held that a girl married against her consent can repudiate the marriage.[8] The discrimination suffered by the Nigerian woman over land acquisition runs counter to their fundamental human rights guaranteed by the Nigerian constitution, which states that

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[5] Traditional practices such as Female Genital Mutilation are sometimes arranged by women to be carried out on their daughters, this is done in order to facilitate her marriage. Some older women assist in taking widows through the widowhood rites, and sometime due to economic crunch mothers agree to give their little daughters out in marriage.

[6] O. Y. Oyeneye, " Marriage and Family" in O.Y Oyeneye, M.O. Shoremi, eds., *Nigerian Life and Culture* (Nigeria: Ogun State University, 1985) 139 at 144

[7] In Ikeduru local government area of Imo state women are not expected to own property, they have no right to sell or lease farm land, neither does she inherit property in her father or husband's house. The only way she can have a share in her husband's property is by having a male child. Among the Igala of Kogi state women do not and cannot hold title to land. The land is the exclusive preserve of the male and is in turn inherited by male sons in the family. Tiv women in Benue state on their own rights do not and cannot enjoy ownership of family land only if they are married and live with their husbands. Although there is a gradual shift from this today, the cultural resistance still serves as an obstruction.

> "Subject to the provisions of this constitution, every citizen of Nigeria, shall have the right to acquire and own immovable property anywhere in Nigeria."[9]

This section has no qualification; rather, it confers on every citizen the right to acquire immovable property. Traditional societies have, however, imputed customary limitations into this section. In a liberal society, where the rule of law reigns, the law seeks to protect all classes of individuals in the state and does not reserve rights to a particular class. The Nigerian Constitution expressly states that

> "everyone is entitled to freedom from discrimination on the grounds of sex, ethnic groups, place of origin..."[10]

The constitutionality of the laws that discriminate against women in Nigeria will be addressed in Chapter Two.

The rights of women in the family are central to their rights as individuals. Violence in the family has been ignored for too long in Nigeria, as is evidenced by the laxity with which the law, courts, law enforcement agents, and the society in general view this issue. The home is the seat of violence for most Nigerian women as revealed in the media. This violence has received less attention and made less of a structural impact on the government and Nigerian society at large. Basic stereotypical cultural barriers prevent it from being viewed as a violation of women's rights.

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[8] *Dr. Osadiaye Osamwonyi* v. *Itohan Osariere Osamwonyin* (1973) 2 UILR 527 at 532.

[9] S. 43, Constitution of the Federal Republic of Nigeria 1999.

[10] S. 46 Constitution of the Federal Republic of Nigeria 1999.

As this chapter establishes, domestic violence takes various forms. Violence against women according to the United Nations official definition, includes

> "Any act of gender-based violence that results in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivations of liberty, whether occurring in public or private life."[11]

Domestic violence relates to violence within but not limited to the family. Within the family context, the manifestation of domestic violence is not only seen as physical assault, which is the common stereotype associated with it, but includes instances of sexual, psychological, and emotional abuse, which affects the health of the victims.[12]

This chapter is an introduction to domestic violence in Nigeria. What is perceived as domestic violence in Nigeria? It will also examine the scope and dimensions of domestic violence in Nigeria. This examination is essential in order to offer adequate solutions to this problem in ways that would be embraced by Nigerian society and would not be offensive to any particular cultural group since each tribe guards the issue of tradition jealously. To further this examination, the origin of violence against women will be addressed. A historical analysis of violence against women, through the lens of colonialism, provides vital basis for understanding the genesis of violence in the Nigerian society and will reveal the impact of colonialism on this issue in Nigeria.

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[11] Article 1 UN Declaration on The Elimination of Violence Against Women, U.N. Doc. A/48/49 (1993).

[12] R. Bird, *Domestic Violence and Protection form Harassment: The New Law*, 2nd ed. (Great Britain: Jordan Publishing limited, 1997 at 1-2.

II. History of Gender Violence in Nigeria

a. Pre-Colonialism

The structure of the Nigerian society during the pre-colonial days was patrilineal, which is still a common feature in most African societies. Hence, women married into "a Yoruba or Igbo patrilineage or a Hausa gandu".[13] The gandu is

> "a voluntary, mutually advantageous, agreement between father and married son in which the son works in a subordinate capacity on his father's farms in return for a variety of benefits including a share of the food supplies."[14]

Typically, women lived in seclusion, but engaged in private trade from their homes. The Islamic religion restricted Hausa women to their household. This practice is called *purdah*. Women in *purdah* were forbidden to be seen by other men excluding their husbands, and were therefore kept in seclusion. However, some women still have to earn a source of livelihood for their families due to the limited earnings of their husbands.[15] This seclusion was not the case in all Nigerian communities, as oral tradition recalls female oba's (kings).[16] In Pre-colonial Nigeria, tribal culture dictated, the role women played in the society. Women contributed to the political affairs in their various communities through power obtained by inheritance (in cases where the matrilineal structure of inheritance was practised, or where only females were born into a family) or by being married into ruling families.[17]

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[13] C. Dennis "Women and the state: the case of the Federal Military Government 1984-85"in H Afshar, ed., *Women, State, and Ideology: Studies from Africa and Asia* (USA: State University of New York Press, 1987) 13 at 14

[14] C. Gore, "Social Exclusion and Africa South of Sahara: A review of Literature" online: http://www.ilo.org/public/english/bureau/inst/papers/1994/dp62/index.htm (date accessed: 10th October 2002)

[15] Supra note 13.

[16] In old Oyo there was a female regent called Orompoto (1535). At Ife in 1936, there was a female Oni (king) Olowu and a second Oni Bebooye. In Northern Nigeria, there was Queen Amina of Katsina in the 15th Century. In the Yoruba society, each township had an Iyalode (literally meaning 'mistress of the streets'- a title bestowed upon the most distinguished lady in town) office. In Itsekiri Princess Idolorunsan was directly responsible for appointing men to political offices and by this was

The Yoruba and riverain Igbo women had the propensity to acquire more wealth than their male counterparts due to their unilateral control of trade and profits made in this was invested into further trade.[18] However, the women in the inland areas (a less developed area) did not have this advantage, rather they used the profits to feed their families.[19] In other societies, such as the Ibibio, where each sex had specific roles, the women formed strong organizations and had political influence on the basis of collective strength.[20] Another avenue through which women exercised political power, in areas that lacked political organisations such as among the Efik, Edo, Kalabari, Ijo and Itsekiri women was either through the office of the queen mother who was seen as a female ruler or through relationships with male rulers as the queen.[21] As a rule, pre-colonial women attained some forms of power, either politically, socially or structurally, that can be seen as being complementary to that held by men.

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responsible for bringing order out of chaos. In at least one Igbo town, Onitsha, there was the institution of the queen "The Omu".

[17] M. Rojas, Women In Pre-colonial Nigeria, Online:<http://www.scholars.nus.edu.sg/landow/post/nigeria/precolwon.html> (date accessed: 10th October 2002).

[18] N. E. Mba, *Nigerian Women Mobilized: Women's Political Activity in Southern Nigeria, 1900- 1965* (USA: University of California, 1982) at 36.

[19] Ibid. at 32.

[20] Ibid. at 36.

[21] Ibid.

A system of judicial mediation was in place before the advent of colonialism.[22] Cases brought to these courts were basically trade disputes.[23] Disputes within the family were settled by the family head, usually the eldest person in the family. The eldest son in the family who is usually the family head inherits the parents' property; this is usually referred to as the rule of "primogeniture".[24] Most Nigerian families are structured according to this rule. The term "family" is not restricted to the nuclear family, but includes the extended family system, a concept prevalent in Nigeria. The extended family is

> "a group of closely related people known by a common name and consisting of a man and his wives and children, his son's wives and children, his brothers and half brothers and their wives and children and probably his near relations."[25]

Polygamy,[26] an essential aspect of the family system, was a customary law institution and still obtains today. Men married more than one wife in order to have children to help in farm work and also to show affluence. The worth of a woman was valued in traditional communities due to the power often associated with child bearing, since children were regarded as economic assets. Where a woman was infertile, she could marry a wife for her husband and bear children through her.

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[22] In most parts of the territories that constitute the present Northern states, the principal law administered by the courts was Moslem law of the maliki school, which was and is still in writing, while for the territories in the present southern states and some parts of Northern states the law in force was the unwritten customary law.

[23] A. O. Obilade, *The Nigerian Legal System*, (London: Sweet and maxwell 1979) at 18.

[24] N.Nzewunwa, "Pre-colonial Nigeria: east of the Niger" in Richard Olaniyan, ed., *Nigerian History and Culture* (England: Longman Group Limited, 1985) 20 at 25.

[25] E.I Nwogugu, *Family Law in Nigeria,* (Ibadan: Heinemann Educational Books (Nigeria) Ltd, 1947) at xxi.

[26] A voluntary union for life of one man with one or several wives.

Although women were visible in the society during this period, their roles were still restricted to farming , trading, cutting trees, and constructing houses.[27] The role of women in the public was limited. They were restricted to their household, with the duty of catering for the family needs.[28] Although women in pre-colonial Nigeria had powers complementary to men, this did not alter the superiority role men exercised over women.[29] Socially, women had a status, which is presently recognised by many religions in Nigeria, as being bearers of fertility; hence the creation of "gods of fertility and social peace".[30] Amongst the Yoruba's of Western Nigeria, the traditional religion recognises *"Ymoja"* a "river goddess that rules over women and children."[31] In spite of this respect disposed to women, accusations of witchcraft were made against them, which the men envisaged as a threat, of women acquiring a source of power which they had no control over.[32] As a result, these women were treated as outcast in their communities. These accusations were made due to the progress made by women traders, leading to a vast increase in the number of women in trade as a result of them leaving their traditional chores to explore other profitable source of living elsewhere.[33] In order to prevent women from dominating trade, their male counterparts formed the Atinga cult movement, to prosecute women who practised witchcraft, which the male traders identified as their source of power, of making profit in trade.[34] The women accused of this practise were forced to succumb to dehumanising acts, which the male traders believed would cleanse them from the evil associated with this practice.[35] In contrast, the witchdoctors recognised by the community were usually men. There was actually no significant difference between the evil practised by them and the female witches, the only difference being the acknowledgement by the community of the practice of the witchdoctor, which can sometimes be used for a good course such as curing the sick.

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[27] Justice A. P. Anyebe, Customary Law: The War Without Arms, (Enugu: Fourth Dimension Publishing Co. Ltd., 1985) at 32.

[28] Ibid.

[29] Supra note 17

[30] Ibid.

[31] E. Elick, L. Merchant "The Gods and Goddesses of the World" Online: <http://www.scns.com/earthen/other/seanachaidh/godafrica.html> (date accessed: 11 October 2002)

[32] Supra note 17

[33] J. Bowen, "Explaining Misfortune: Withchcraft and Sorcery",online: <http://www.wulaw.wustl.edu/Students/Courses/Cunningham/LLC/Bowen1.html> (date accessed :25 August 2001).

Although subordinate to men, pre-colonial women had their own roles in the community that were not interfered with by the men. They were content with their way of living, submitting to the authority of their men and at the same time jealously guarding their positions in the community, which were complementary to the men.

b. Colonialism

The traditional role played by African women in the community was adversely disrupted by colonial penetration in the nineteenth and twentieth centuries.[36] Prior to colonialism, African women experienced minimal exercise of inequality by men. Colonialism further re-enforced discrimination against women through the machinery of the state, by introducing a society that was more stratified and emphasising racial segregation.[37]

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[34] Ibid.

[35] Ibid.

[36] F. C. Steady, "African feminism: A world wide Perspective" in R. Terborg-Penn, A. Benton Rushing eds. *Women in Africa and the Africa Diaspora,* 2d ed (Washington DC: Howard University Press, 1996) 3 at 9.

The initial contact between the British and Nigerians began with trade relations. Trade disputes led to the establishment of consular courts.[38] Through this medium British law filtered into Nigeria, and eventually led to the establishment of British governance over Nigeria in 1862.[39]

The colonisers came with a patriarchal civilisation. European women also suffered a similar dilemma of gender discrimination as African women. Spousal abuse was undisputedly accepted in the society, and perpetrators' actions were justified since most went unpunished.[40] This was due to the predominant belief of the husband's ownership of his wife and he could exercise an undue amount of authority over his property.[41] This was the situation of women in the 18th and 19th century Europe, which was reflected in the administration of colonial subjects.[42] This had an adverse implication on African women as they experienced violence at home and from the Europeans.[43] Inter-racial relations were forbidden between the British and the Nigerian women; the "1909 Concubinage Circular" punished those who were found guilty of this act.[44] Sequel to this, Sir Frederick Lugard[45], in 1914, enacted the "Secret Circular B".[46] Through this law miscegenation and bestiality were viewed as the same offence, but it never came into operation due to its unfeasibility and the potential danger its applicability envisaged.[47] Nevertheless, the colonisers still satisfied themselves with the local women, by engaging them in prostitution services with their troops whilst still maintaining their legal and social status by outlawing legal marriages between the local women and white men.[48] Some women were even marked as white men's favourites.[49] These women received beatings from potential or actual husbands or from their fathers as punishment for their illicit relationships with white men, - actions they simply did not have control over.

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[37] Ibid.

[38] Supra note 23.

[39] Ibid. at 18

[40] Hon. Madam Justice Mclachlin "Crime and Women - Feminine Equality and The Criminal Law (1991) 25 U. of B.C.L. Rev. 1 at 15 - 16.

[41] Ibid.

[42] A. Mama, Heros and Villains? Conceptualising Colonial and Contemporary Violence against African women in Chandra Mohanty, Jacqui Alexander eds., *Feminist Genealogies, Colonial Legacies, Democratic Futures* (New York: Routledge 1997) at 5.

[43] Ibid.

The traditional value of African women, which was respected prior to colonialism gradually, effaced from the society, and they were more or less seen as the white man's property to the disgust of local men.[50] Eventually, these women were rejected by their own people, not accepted by whites, and hence were left to make their own life.

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[44] Ibid. at 6.

[45] The British Commissioner who in 1900 formally proclaimed the protectorate of Northern Nigeria. In 1912 he was made the Governor of both the Northern and Southern protectorates.

[46] Supra note 42.

[47] H. Callaway, *Gender Culture and Empire: European Women in Colonial Nigeria* (Great Britain: The Macmillan Press LTD, 1987) at 49 .

[48] C.Enloe, *Bananas, Beaches, and Bases: Making feminist sense of International Politics,* (Berkeley: University of California Press, 1990) chapter 3.

[49] Ibid.

[50] Supra note 42.

The system of migrating men into urban centres to secure employment in Northern and Southern protectorates, brought about the restriction in the freedom of movement of women.[51] The women were left in the rural areas to engage in the production of food while men were taken to urban areas to work for the colonialist in mines and earn more wages.[52] Regardless of this, women moved to urban areas either to earn a more profitable source of living or to escape violence at home in the rural areas.[53] African men could not accept the increased migration of their local women to the urban areas, an act which they saw as a loss of power over these women and their homes, thus they tactically employed means such as periodic round ups to remove them from the urban area.[54] This act was definitely against the women's right to freedom of movement. The colonisers and natives carried out these forms of discrimination against women, due to the bad reputation urban women had in the society.[55] The natives also believed that the migration of their women into urban areas, would give the women an opportunity to challenged their much guarded authority and they would rather have their rural women who unquestioningly submit to their authority.[56] In 1915, the colonisers further made a law, with the intention of reducing the migration of women into urban areas, proposing that single women in Katsina city be given a seven day ultimatum to get married, and those they made prostitutes be removed from the city.[57]

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[51] Ibid. at 7.

[52] Ibid.

[53] Ibid.

[54] Ibid.

[55] Ibid. at 10.

[56] Ibid.

The campaign against colonialism also created an avenue of subjecting women to different forms of sexual violence in order to humiliate their men and lead them to confess to the secret activities carried out against colonial rule.[58] Due to the obvious discrimination against women and the frustration suffered by them, women rose up and waged intermittent struggles against these various forms of violence. During the periods between 1928 -1930, women from Aba (Eastern Nigeria) challenged the discrimination they suffered from the colonialist. [59] This included the attempt made by the colonialist to count the women in the community, which they feared as an attempt by the administration to tax them based on their zero earnings.[60] Since they had no profitable source of living and were totally dependent on their husbands' limited earnings, which they complained , was further being over taxed, thereby reducing amongst other things their standard of living.[61] The British also introduced the community warrant chief system. These chiefs were regarded as the eyes of the British administration in the community.[62] The chiefs abused this authority and used their position to perpetrate violence on women in forms of sexual abuse and escaping the payment of bride price (an amount paid by a man in order to marry his bride), which expressed the worth of girls in the community.[63] These Igbo women also fought to eliminate this system. During this uprising not less than fifty women were killed.[64]

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[57] Ibid. at 8.

[58] Ibid. at 7.

[59] T. Turner , M. O. Oshare, "Women's uprising against the Nigerian Oil Industry in the 1980s", Online: <http://www.uoguelph.ca/~terisatu/Counterplanning/c9.htm> (date accessed:6August 2001).

[60] Van Allen J, "Sitting on a Man: Colonialism and the Lost of Political Institution of Igbo Women" (1972)6 Can. J. Afr. Std. at 172 -178.

[61] S. Leith-Ross, *African Women: A Study of Ibo of Nigeria*, (New York: Frederick A. Praeger, 1965) at 24.

A similar event occurred amongst the Egba women (a tribe in Yoruba Land of Western Nigeria). The Alake (King) of Egba land (a position similar to a warrant chief in Eastern Nigeria but with a higher authority) also used his position to oppress the Egba people especially the women under the cover of colonial administration.[65] The women rose up against this, which successfully led his resignation.

Prior to colonialism, powerful women who ruled or participated in a system of diffuse authority, more or less had complementary powers with the men. In furtherance to the discrimination exerted on African women, the colonialist introduced "political institutions" based on the European model, which reduced women's participation in politics due to their lack of literacy in the colonialist language.[66] This further induced women's dependence on their husbands.[67]

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[62] Supra note 59.

[63] Ibid.

[64] Ibid.

[65] Supra note 59.

[66] Prof. Jadesola Akande, "Women and the Law"(seminar on the role of women and the law, Institute of Advanced Legal studies Lagos, [unpublished].

[67] Ibid.

The above development, coupled with the domestication of women, confining them to be economically dependent housewives, made it difficult for them to leave unbearably violent situations; and this difficulty, in turn, facilitated domestic violence. Colonialism thus opened the flood gate of abuse of women by both the foreigners and natives. It "degraded, brutalised and domesticated African women".[68] This period traumatised African men and women psychologically, by displacing the societal structure, which they had become accustomed to. [69] The change introduced by the colonizers in the role played by women forced them to be dependants in order to survive. This dependence forced many women into a subordinate position where men had control over them. The effects of colonization are presently being felt in Nigeria.

In Nigeria today, women still remain under the control of men, and are devalued by them. In marriage, they become possessions and get little respect from their husbands. A woman usually does not receive any inheritance and is blamed if she cannot have children. Recently, education is beginning to be valued by women. Hopefully, over time women will use this education they are being offered to regain their independence.

However, the gains of colonialism to Africa women cannot be ignored. It gave them free choice in Christian monogamous marriage, the opening of schools, the introduction of modern medicine and hygiene, and also the suppression of some barbaric practices such as killing of twins in Calabar by a Scottish missionary, Mary Slessor.[70]

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[68] Supra note 42.

[69] T. Ufomata, Online: "Women in Africa: Their Socio-Political and Economic roles", (2000) West Africa Review <http://www.icaap.org/iuicode?101.2.1.4> (date accessed: 6 August 2001).

c. Post-Colonial Period

Traces of patriarchal form of governance introduced by the colonisers still exist in Nigerian society today, even after independence, as is evidenced by Nigeria's sexist laws in the nation. The various post-colonial regimes exhibited a high tolerance for domestic violence. The political crisis in post-colonial Africa, followed decline in the economy, resulting in the dependence of women on men, which therefore led to an exercise in vengeance against women.[71] Through struggles by many feminist activists the plight of women came to the limelight. They provided great advocacy of women's rights. From the 1960's violence against women has been found to occur mostly in the home regardless of the family type.[72]

Successive military rule (1966-1979, 1983-1998) led to the suspension of the Constitution, which guaranteed the fundamental rights of all Nigerian citizens. The rights of many, especially women, were violated during this period. Violence against women also proliferated especially between the mid 80's and early 90's with the "War Against Indiscipline," a program set out to curb the indiscipline of the people since, the regime attributed the declining state of the country to indiscipline.[73] This program resulted in many women being subjected to all various forms of abuse. Following this, the military governor of Kano state in 1986, promulgated an edict, whereby, being single upon attaining marriageable age became a crime and further gave those women who fell within this category a three-month ultimatum to get married or be punished.[74] In effect, the state maintained the tenor of colonialism, by violating the rights of women to personal liberty and contributing to their over-dependency on their husbands at home. They endured any form of violence meted out to them since the law lacked the machinery to protect them. They had no place of refuge.

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[70] "Famous Missionary Lives" Online: <http://www.users.on.net/mec/answers/48c_mi.htm> (date accessed: 11th October 2002).

[71] Supra note 42 at 13.

[72] T. O. Pearce, "Assaulting a wife: perspectives on conjugal violence" in Mere Nakateregga Kisekka, ed., *Women's Health Issues in Nigeria* (Jos: Tamaza Publishing Company Limited, 1992) at 191.

[73] Supra note 42 at 14.

Feminists intensified their advocacy for women's rights. Gradually, women became active participants in the economic activities of their community.[75] This resulted in their independence and control of the markets. The Babangida regime (1985 - 1993) introduced "Better Life for Rural Women", a program aimed at alleviating the plight of women at the grass-roots level. This program was to empower women politically and economically but became a programme for the elites in the society , thereby co-opting women into the state as a subordinate and ineffectual part of the power structure. The tangible achievement of the program was very limited.

The Abacha regime (1993-1998), created the Ministry of Women Affairs and the Family Support Program (hereinafter called FSP). The FSP then replaced Better Life for Rural Women. The FSP further subsumed women's issues under the broader goal of protecting family integrity. The wife of the current president, Mrs. Stella Obasanjo, criticised past first ladies over what she described as "reckless spending of public funds on nonsustainable women's programs."[76] She lamented that the past programs which targeted at women had failed woefully to improve the lots of the rural dwellers. She cited programs such as the Better Life for Rural Women, and FSP, stating that these pet programs provided female parades, replete with flamboyant trappings, and eventually eroded public confidence in action to redress gender inequalities.[77]

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[74] Ibid.

[75] Ibid.

Such has been the state of most programs initiated to alleviate the plight of rural women. In the struggle for women's empowerment, the basic issues have been neglected, in that discrimination against women over inheritance and property laws, widowhood rights, and domestic violence still persists. Domestic violence requires urgent attention. It has been identified as the root of violence against women in Nigeria, due to socio-cultural stereotypes that surrounds this issue in the society. Various authors and NGO's have brought this issue to the public and have tried to influence the government to protect the rights of women in the home but are yet to make much of an impact.

III. Manifestations of Domestic Violence In Nigeria

Various writers have identified varying manifestations of domestic violence, which encompasses bride price or dowry, widowhood rites, female genital mutilation, child marriage, and spouse battering.

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[76] A. Adeyemo, "Stella Obasanjo Criticises Past First Ladies" *This day News* Lagos Nigeria (29 June 2001).

[77] Ibid.

a. Bride Price/Dowry

A distinction lies between dowry and bride price. Dowry is "a customary gift made by a husband to or in respect of a woman at or before the marriage."[78] Although defined as a gift, it is enforceable by a court of law.[79] In traditional societies, the bride price is the amount paid by a potential husband to "purchase" his wife.[80] This is otherwise referred to as the "commodification of women."[81] Nigerian society today has diverted from the original concept of bride price, a traditional practice that has existed for thousands of years; has withstood European colonialism in the late 1800's and early 1900's; and has survived until the present day. In the traditional society, this was the pride of a young girl which accorded her a lot of respect from her peers and in-laws.[82] Rather than giving money, a dowry can be in form of labour services, carried out by or on behalf of the husband for the brides' family.[83] This form of service could be paid over a long-term period and can take the form of a constant debt.[84] However, in contemporary Nigeria, it can be paid both in cash and kind;

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[78] S.2 Marriage, Divorce and Custody of Children Adoptive By-laws Order, 1958 of the Western Region.

[79] S.2 Limitation of Dowry Law 1956 of the Eastern Region.

[80] Hon. C. Oputa, "Women's Reproductive Health Rights" in T. Akumadu, ed., *Beast of Burden: A study of Women's Legal Status and Reproductive Health Rights in Nigeria* (Nigeria: The Women's Rights Project Civil Liberties Organisation, 1998) 123 at 133.

[81] T. U. Akumadu "Bringing the Law Home", in *The Law At Home: A Report of Legal Rights Advocacy on Domestic Violence in Nigeria* (Women's Centre for Peace and Development (WOPED), 1999) at 9.

[82] Ibid.

[83] S. N. Chinwuba Obi, *Modern Family Law in Southern Nigeria*, (London: Sweet and Maxwell, 1966) at 176.

[84] Ibid. at 178.

either in whole or by instalments.[85] Legislation controls the quantum to be paid, but in reality it is fixed by the individual bargaining.[86] This practice can be referred to as the purchase of a human commodity, indicating ownership of and complete authority over that commodity.

The bride price is refunded upon the irretrievable break down of the customary law marriage.[87] Law limits the amount recoverable in some parts of Nigeria. In the Eastern states, the maximum amount is ₦ 60.00 (sixty Naira)(which is equivalent to 85 Canadian cents), the maximum amount for bride price in the Eastern states.[88] This entire transaction can be compared to bargaining in a marketplace, where a suitable price is agreed upon, and the buyer gains possession of the goods. After usage, if a defect is noticed, then the buyer returns the goods, and the purchase price is refunded. In Nigeria, an amount will be deducted for usage.

In contemporary Nigeria, this practice varies amongst different cultures. Some have discontinued it, and in the alternative the wife receives gifts. However, this practice still obtains in parts of Nigeria and has been an avenue to demand outrageous amounts from the man. Due to the huge sum of money paid, the woman is expected to carry out her husband's commands.[89] The women are often treated as articles of property and subjected to violence at the least sign of insubordination, having being bought at an outrageous price.[90] This practice is effectively an outright sale of a human commodity, which belittles the worth of a woman rather than enhancing her dignity and respect. In traditional society, it was a woman's pride for her potential husband to come and pay her bride price. This also obtains in the modern society. This is the initial joy that comes with being so highly valued. During the marriage however, she is devalued for having been so highly purchased. Until the price is repaid, the woman still belongs to her husband, and even when she gives birth to children outside this marriage, they are regarded as his children.[91]

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[85] Ibid.

[86] In the 1950's, the amount payable in the Eastern region was £30. In the local government areas in the west and mid-western regions the maximum was £35 or as determined by the local government body.

[87] Supra note 27 at 183.

[88] Limitation of Dowry law cap 76, Laws of Eastern Nigeria 1963.

[89] Supra note 81at 10.

Society is dynamic, and traditions that are detrimental to a particular group of people should be modified or totally abolished for violating their fundamental human rights.[92] In the campaign against domestic violence, the bride price system needs to be modified in traditional societies.[93]

b. Widowhood Rites

A widow in Nigeria is forced to participate in various dehumanizing traditional practices by her in-laws, in order to lead her to confess to the murder of her husband, if she was responsible for it.[94] Up until the present day, widows are put through gory rites to prove their innocence or in the name of mourning the dead. Such dehumanizing rites include:

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[90] Supra note 80.

[91] Ibid. at 134.

[92] S. 34 Constitution of the Federal Republic of Nigeria 1999: guarantee the right to dignity of human person.

[93] Supra note 81at 10.

[94] "Widowhood in Nigeria" *Violence Watch* 2:3 (July-September 2000) 1 at 4.

> "crying out loud, shaving of hair, being isolated, bathing in the bush, sitting by the corpse, wife inheritance, eating from a broken unwashed plate, and sitting on the floor."[95]

Wife inheritance means, inheritance of the widow by her in-laws. All these practices are peculiar to different communities, and according to myth, it shows that the wife loved and appreciated the man.[96]

In some tribes in Plateau state, when a widow re-marries, she forfeits her ownership of her late husband's property including custody of her children.[97] Due to this fear, widows are compelled to remain in the late husbands compound, leaving them as objects for inheritance. The case of *Godfrey Nwaribe* v. *President & Registrar of Omuma District Court of Orlu*[98] illustrates the practice of widow inheritance. The widow continued to live in her late husband's house after his death. She then re-married and gave birth to twins. The question of patrilineage arose. It was held that, "according to the Otulu custom, a widow's children conceived after her husbands death remained his, provided she resided in his home at the time of conception."[99] In the Eastern states, some communities insists that the widow goes through 'Ajayin' rituals. [100] This cleanses the widow of the dead man's spirit, often carried out twelve days after her husband's burial and according to traditional custom, without this ritual, the woman's subsequent husband may also die.[101] The opposite obtains when a man losses his wife. He is allowed to immediately appropriate the wife's property without hesitation from his in-laws and sometimes, he is not allowed to sleep alone; a woman is brought to console him.[102] In extreme circumstances, he is immediately given a substitute wife.

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[95] Ibid. at 3.

[96] A. O. Bassey, "Religion, Culture and Tradition in Cross River State" in CPR ed., *Eliminating Discrimination Against Women: The Report of a Conference Organised by Constitutional Rights Project, CRP, and the Friedrich Naumann Foundation* (Nigeria: CRP, 1995) at 25.

[97] Supra note 80at 64.

[98] Law Reports of Eastern Nigeria 1964 vol. 8 HOW/2M/64.

[99] Supra note 80at 67.

[100] Supra note 94 at 13.

These rites have undergone some modification from the extreme traditional dictates of the past. In the past, a woman was to be buried alive with her deceased husband, but this practice has now been abolished. To bring effective change, laws should be enacted to abolish these practices as they do not accord with contemporary times.

As regards widowhood disinheritance, the old attitude of disinheriting the widow where no will exists is changing as a result of the decision in *Nzekwu* v. *Nzekwu*,[103] Nnamani JSC reading the lead judgement held that

> "an onitsha widow may with the consent of her in-laws deal with the property of her late husband and that the custom which postulated that anokpalla (family head) has the right to alienate the property of a deceased in the lifetime of his widow is barbarous and uncivilised as it is repugnant to natural justice and equity"[104]

The only problem envisaged from this judgement is its practical application. Under Islamic law in Nigeria, "a widow is allowed a quarter of her husband's estate, while a widower takes half of the wife's estate".[105] The disparity under this law is seen in the unequal distribution of property acquired between the spouses when one predeceases the other, which in itself is discriminatory.

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[101] Ibid.

[102] Ibid. at 4.

[103] (1989) 2 N.W.L.R pt.104 at 373-393.

[104] H. Ogunwumiju, "Legal Rights of the Widow in Nigeria" *Violence Watch* 1:2 (April - June 1999) at 7.

The plight of widows has recently been addressed in Nigeria. Human rights organisations, such as Civil Liberties Organisation, have through series of seminars and public lectures have educated the public of the evil of these practices, of the health hazard they pose to widows and, most importantly, of their infringement of the fundamental human rights of women to personal liberty and right to dignity of human person as guaranteed by the Nigerian Constitution.[106] Though not all widows undergo these rites, those who escape have been economically empowered by their deceased husband.[107] This practice can also be avoided where the deceased makes provision for a will. Unfortunately, most Nigerian men, both educated and illiterate, decline making wills since, it is believed, that by doing this one envisages death.

This harmful traditional practice has to be eliminated, and women should also strive to achieve a level of economic independence.

c. Female Genital Mutilation

This term is generally referred to as "Female Circumcision" which describes the "traditional practice in which a person, often unskilled, cuts off parts or the whole organ of the vulva or stiches the vulva together."[108] The term "Female Circumcision" understates the severity of the act. According to Dr Irene Thomas,[109]

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[105] In *Sidi v. Sharbon* (1992) 4 NWLR pt 133 @ 133 para 2, it was held by the court of appeal that under Islamic law of inheritance, the widow of a childless man is entitled to a quarter of his estate.

[106] S. 34, S.35 1999 Constitution of the Federal Republic of Nigeria.

[107] R. Amuche, " The Travails of Becoming Single Again" *Violence Watch* 2:3 (July - September 2000) 9 at 13.

> "Female Genital Mutilation is now a universally accepted term used to describe any interference with the natural appearance of the female external genitalia using a blade, knife or any sharp instrument in order to bring about either a reduction in size of the clitoris or a complete removal of the vulva."[110]

Some members of male anti-circumcision organisation have made the error of equating male circumcision to female genital mutilation (hereinafter called FGM).[111] Male circumcision cannot be compared to clitoridectomy which is the simplest form of FGM. Clitoridectomy for males requires "cutting off the head of the penis" as well as the fore skin.[112] The reason often adduced for FGM, includes, preserving a girl's purity, by preventing her from losing her virginity to another man, other than her future husband.[113] Traditional communities in Nigeria view this practice in high regard, some girls may be ridiculed or even ostracized from the community, if they were found to have lost their virginity before marriage.

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[108] Women's Centre for Peace and Development (WOPED), *Repudiating Repugnant Customs: The call to Ban Female Genital Mutilation in Nigeria*, (Nigeria: WOPED, 2000) at 4.

[109] Medical Practitioner in Nigeria.

[110] This quotation was not cited from the original source, but from a citation in a book : Women's Centre for Peace and Development (WOPED), *Repudiating Repugnant Customs: The call to Ban Female Genital Mutilation in Nigeria*, (Nigeria: WOPED, 2000) at 4. The original citation which was cited in the above mentioned book is: I. Thomas, "Strategies and Tactics for Prevention And Eradication of Female Genital Mutilation (FGM)", Information Blitz on FGM, Project Sister Help, November, 1995.

[111] Rising daughter aware! On Comparisons Between Male Circumcision and Female Circumcision" (Female Genital Cutting/Mutilation)online: <http://www.fgm.org/MalevFemCirc.html>(date accessed: 27 August 2001)

[112] Ibid.

[113] Ibid.

No male is circumcised for this reason. The issue of male circumcision is far less complicated than FGM.

FGM is outrightly dangerous and harmful to females. Apart from the religious reasons and the need for social conformity adduced for male circumcision by Christians and Jews, much controversy surrounds the benefits of male circumcision. Researchers have proved that male circumcision helps prevents penile infection, since circumcision helps to keep the penis clean. [114] The counter argument states that good hygiene can prevent these diseases and that circumcision is not required.[115]

A recent study in Australia concludes that an uncircumcised male has a higher risk of being infected with HIV.[116] The study revealed that "the inner mucosal surface ofthe foreskin is not keratinised (the keratin found on the human skin toughens it and protects it against sun rays) and is rich in Langerhans' cells, which absorb and secrete a lot of fluids, thus making it susceptible to the virus."[117] Statistics states that "70% of men get infected with HIV through vaginal sex, whilst the remaining 30% acquire this infection from insertive anal intercourse."[118] Furthermore, "during heterosexual intercourse, the foreskin is pulled back down the shaft of the penis, and the whole inner surface of the foreskin is exposed to vaginal secretions, providing a large area where HIV transmission could take place."[119]

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[114] Mayo Clinic Family Health Book, D. Larson ed., (New York: William Morrow, 1990) at 32.

[115] Ibid.

[116] R. Szabo, "How does circumcision protect against HIV infection"? British Medical Journal June 10, 2000 at 1592 - 1594

[117] Ibid.

[118] Ibid.

[119] Ibid.

While the circumcised male penile urethra contains few Langerhans' cells.[120] The research also reveals that "male circumcision also protects against other sexually transmitted infections, such as syphilis and gonorrhea."[121] Contraceptives such as condoms can provide protection against these infections.[122] Cultural and religious obstructions may serve as a barrier to the use of condoms. In Nigeria this can be a potent barrier to the use of contraceptives.

The aim of this comparison is not to advocate for male circumcision but to illustrate that a comparison between these two practises, simplifies and overlooks the misogynous intentions of FGM. All individuals are born free and have a right against torture and against inhuman and degrading treatment, and everyone has the right to a standard of living adequate for the health and well-being of himself and of his family.[123]

Different forms of FGM in Nigeria are peculiar to different ethnic groups. "Sunna" ("religious duty" in Arabic) is the "excision of the clitoral hood, with the preservation of the clitoris itself and the labia minora."[124] This is practised mainly in the south-east, south, and south-west of Nigeria. The "excision" or "clitoridectomy", is "the excision of the prepuce and clitoris together with partial or total excision of the labia minora."[125] This is practised in the North-West of Nigeria. "Infibulation" involves "the removal of the entire clitoris and the adjacent parts of the labia minora and the adjacent medial part of the interior labia minora."[126] The two sides of the vulva are then stitched together with thorns or thread, leaving only a tiny opening for the flow of urine and menstrual blood.[127] This practice is prevalent in Northern Nigeria; it has also been found in some parts of Eastern and Western Nigeria.[128] In Northern Nigeria, there is also the "gishiricut" which involves using a sharp instrument is used to create a cut in the anterior all of the vagina."[129] This often result in vescio vaginal fistula commonly called V.V.F, if the unskilled person carrying out this operation, makes the cut too deep, and creates a passage between the bladder and the vagina.[130] This is defined as "the breakdown of tissue in the vaginal wall communicating into the bladder or the rectum or both."[131] A study revealed that this practice leads to VVF, and in 1983, 13% of VVF case were associated with gishiricut in Zaria, Northern Nigeria.[132] Various campaigns have been carried out advocating against FGM, due to the health, social, psychological hazards it poses to women.

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[120] Ibid.

[121] Ibid.

[122] Ibid.

[123] Articles 5 and 25 Universal Declaration Of Human rights 1948-1998.

[124] Supra note 108 at 10.

[125] Ibid.

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[126] Ibid. at 7

[127] Ibid.

[128] Ibid. at 7 - 10.

[129] O. Albert, *Women and Urban Violence in Kano Nigeria*, (Nigeria: Spectrum Books Limited, 1996) at 92.

[130] Vesico Vaginal Fistulae (VVF) Online: <http://www.forward.dircon.co.uk/vesico.htm> (Date accessed: 14th October 2002)

[131] Ibid.

[132] K. Bello, "Vesico Vaginal Fistula (VVF): Only to a woman Accursed", Online: <http://www.idrc.ca/books/focus/773/bello.html> (date accessed: 27 August 2001).

Studies revealed that infibulated females go through the painful process of urinating which takes an average time of 10-15 minutes![133]

In Nigeria, the prime driving force behind this practice is tradition and the misguided belief that it prevents promiscuity. It has, however, no religious backing in the Bible or the Koran. In Edo State, the practice has been abolished and offenders fined or imprisoned. This law makes consent of the person mutilated irrelevant. The offenders are any of the persons listed below:

> a) "any person that offers herself for genital mutilation
> b) any person who coerces, entices, induces any person to undergo female genital mutilation.
> c) any person who allows any female who is either the daughter or ward to be genitally mutilated.
> d) any person who performs the operation of genital mutilation."[134]

Some other states such as Cross River, Rivers and Ogun have followed suit. At the federal level, HB 22 bill sponsored by Mrs. Janet Adeyemi, member of the House of Representatives seeking to outlaw this practise in Nigeria, was voted down by the members of the House of Representatives. Recently, a call was made to the Federal Government at a workshop organised by an NGO, Centre for Community Development (hereinafter called CENCOMDEV) in Lagos, to enact a law that will check FGM. The organisation noted that some of the causes of persistence of the practice are tradition, ignorance and the belief that it has health and social benefits. Accordingly, CENCOMDEV proposed that this legislation carry penalties sufficient to deter its violation This would be consistent with the 1999 Constitution which states:

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[133] Alison T. Slack, "Female Circumcision a critical appraisal" (1988)10 H. Rights Quart. at 437- 486

[134] Hon. E. Jacobs, "Checking the Menace of FGM, reproductive Rights Reproductive Wrongs", *Violence Watch* 2:2 April- June 2000 at 10.

> "Every individual is entitled to respect for the dignity of his person and accordingly-
>
> (a) No person shall be subject to torture or to inhuman or degrading treatment;
>
> (b) No person shall he held in slavery or servitude."[135]

Excision or clitoridectomy, is mostly practiced in Kenya and has been found to cause the increased death of female children.[136] As a result of this, the Kenya government prohibited FGM, with perpetrators being tried under Kenya Chief's Act.[137] Similarly, in Sudan, the Sudan Penal Code selectively punishes the different forms of FGM.[138] Where the projecting part of the clitoris is removed this is not considered as an offence, unlike the performance of excision or an infibulation ritual and further punishes offenders to a term of five years, a fine or both.[139] These African countries have taken a step towards the elimination of this crime against women. It is noted that any form of FGM endangers a female child and should be abolished outright. With the increased education on the effects of this practise, it is hoped that this will soon be abolished in Nigeria.

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[135] S. 34 (a), (b) Constitution of the Federal Republic of Nigeria 1999.

[136] I. Ferguson, P. Ellis, *Female Genital Mutilation: A Review of Current Literature* looseleaf at 24 - 25.

[137] Ibid.

[138] Ibid.

[139] Ibid.

d. Child Marriage

No consensus exists in Nigerian law on the official age for marriage. Many of the laws at the state and the federal level have varying stipulations for marriageable age.[140] This non - coherence of the laws gives credence to the issue of 'child brides'. This practice is rampant in Northern Nigeria, where it is accorded with religious backing. This has been stated to also exist in southern Nigeria, particularly in the "Orlu, Orsu, and Ideato local government areas in Imo State".[141]

Under the Islamic legal system known as the Maliki school of law, a father has a right to choose a spouse for his virgin daughter regardless of her age; where he consults her, this gives her a right to choose.[142] This is called the father's right of 'Ijbar'.[143] However, he may lose this right if he gives his daughter a right to choose.[144]

There have been reported cases of harm done to these girls by their husbands, following repeated and failed attempts to escape. Some of them end up killing their husbands or committing suicide.[145] Hauwa Abubakar's[146] story is one such case. At the age of nine she was married off to a forty-year old man, in payment of a debt. She escaped repeatedly but was always returned by her father. In order to prevent her eventual escape, her husband chopped off her legs, and she died from excessive bleeding at the hospital. Her husband pleaded guilty and received life imprisonment. In response to the huge public outcry, the Military Governor of Bauchi State issued an Edict to prosecute any parents who withdrew their children from school for marriage.

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[140] Under the Marriage Act the minium age of marriage is not defined. It however acknowledges that persons under 21 years of age can enter a marriage with parental consent is received. The matrimonial causes act does not define marriageable age but makes it a ground for the voidability of the marriage where either party has not attained marriageable age. Customary law does not also stipulate the age limit for betrothal. Girls may be betrothed at an early age even from birth. In Islamic law, marriage can be carried out on behalf of infants and virgin daughters. This is known as "Jabr". In Eastern Nigeria the minium age for marriage is 16 years.

[141] Supra note 80 at 45.

[142] *Karimatu Yakubu and Alhaji Mahmoud Ndatsu* v. *Alhaji Yakubu Tafida Paiko and Alhaji Umaru Gwagwada* CA/K/80s/85. Karimatu was able to escape a forced marriage because her father had given her an initial right to make a choice therefore he lost his right of "Ijbar".

[143] Supra note 80 at 43 - 44.

[144] *Alhaji Isa Basida* v. *Baiwa.* Appeal No. SCA/NWA/CV/47/70, March 1971.

Some of the reasons given for this practice include economic gain, to prevent promiscuity, and settlement of debt. As well, a female child is considered as a burden; since they will eventually be married off, the responsibility of training her should be left to her husband. All these are unfounded excuses, as the major disadvantage is the great danger child marriage poses to the health of the child. As noted earlier, it can give rise to V.V.F, and recto vaginal fistula (hereinafter called R.V.F) in the course of extended labour caused by an under-developed pelvic cavity. V.V.F is a health condition that can result primarily from the interplay amongst numerous physical factors, such as "obstructed labour, accidental surgical injury related to pregnancy and crude attempts at induced abortions."[147] This occasionally causes a connection between the bladder and the vagina. The woman suffers from uncontrollable passage of urine and sometimes of faeces in cases of R.V.F, since 10 to 15 per cent of all V.V.F cases have associated R.V.F .[148] This condition often results from pregnancies as a result of early marriage.[149] The bodies of these young girls are not matured to go through labour, and this results in agonising pains of prolonged labour. In a study carried out by Tahzib in 1983, of 1,443 V.V.F patients at the Ahmadu Bello University Teaching Hospital, Zaria, Northern Nigeria, it was revealed that

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[145] Attacks on women, *Violence Watch* 2:3 (July-September 2000) at 5 Jamila Na'isah an 18 year old girl committed suicide by drinking poison in protest against a forced marriage.

[146] National Concord Lagos Nigeria, (25 September 1987) front page.

[147] "Harmful Traditional Practices Affecting the Health of Women and Children", online: <http://www.unhchr.ch/html/menu6/2/fs23.htm> (Date accessed: 28 August 2001).

> "1,209 (83.8%) of V.V.F resulted from prolonged labour, 188 (13.0%) from Gishiri cuts, 14 (1.0%) from surgical trauma, 10 (0.7%) from infections, and 22 (1.5%) from "other" causes including congenital injuries and the insertion of caustic materials into the vagina."[150]

Nigeria has a total of 150,000 cases of V.V.F and R.V.F[151] The patients are left at home and treated as outcasts when they are not hospitalised, since it is believed that these conditions are a curse on the girls affected.

In some cases the girls are willing to be married off. Investigation into these cases reveals that improper treatment at home, over protection by fathers, poverty, illiteracy are factors that prompt their decision to marry. Marriages appear to offer escape from their present situations. Education will go a long way in highlighting the evil in this practice. The discontinuance of this practice can be made possible by a change in the present laws. Namely, by the inclusion of a definite age of marriage for both sexes, and by the prosecution of perpetrators of child marriages.

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[148] Ibid.

[149] Supra note 81 at 39.

[150] Supra note 132.

[151] Supra note 81.

The Federal Government of Nigeria recently designed a new national policy on womanhood- the "Charter for Womanhood". This policy *inter alia* bans the marriage of women under 18 years of age.[152] This policy is intended to reduce the rate of school drop outs and eventually increase literacy in many parts of Nigeria. The National Assembly is yet to pass this into law.

The United Nations *Convention on the Elimination of All Forms of Discrimination Against* Women enjoins state parties to

> "take appropriate measures to eliminate discrimination against women in all matters relating to marriage and family relation, and, in particular to ensure, on a basis of equality of men and women:
>
> (b) The same right to enter into marriage;
>
> (c) The same right freely to choose spouse and to enter into marriage with their free and full consent..."[153]

Chapter Three below addresses the binding effect of this international convention and other conventions related to the protection of women's rights against state parties.

e. Spouse Battering in Nigeria

This is the main focus of this research. Although a non-gender term is used, this does deviate from the fact that the term "spouse" in this research refers to the victim (she) and is not restricted to married couples but embraces co-habiting relationships. This, however, does not extinguish the fact that men are also victims, but this situation is an exception rather than the rule. It is a taboo for Nigerian men to report this, as he will not be seen as a 'man'.

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[152] "Charter for Womanhood" *Vanguard Newspaper* 14 June 2001 Online: <http://www.vanguardngr.com/news/articles/2001/june/26062001/vc/260601.htm>

[153] Article 16 Convention on the Elimination of all forms of Discrimination Against Women.

Battering may also occur in same sex relationships. Nigerian society has not yet considered this issue, since it has yet to fully embrace the criminality of spousal violence in heterosexual relationships.

Most jurisdictions have acknowledged the gender nature of this problem. Some use gender terms, referring to the victim as "she", while those who use gender neutral terms still acknowledge the gendered nature of the problem. The Law Reform Commission of Nova Scotia specifically referred to women being the victims of domestic violence and totally discarded the use of gender neutral terms.[154] The Alberta Law Reform Institute applied a gender neutral term, though it recognised that a vast majority of victims are women.[155]

Whatever term is adopted, statistics have revealed that this is indeed a gender problem and that most of the victims are women. Global statistics reveal that male partners often assault women with whom they have intimate relationship, and in a year, assault almost six million women, amongst which, 1.8 million record severe assault.[156] In the United States of America, in 1994, 62% of the victimization of females came from persons they knew.[157] The statistical report of the Federal Bureau of investigation (FBI), further confirmed that, in 1992, 1,432 women were killed by men with whom they had an intimate relationship.[158] In the preceding year, an average of "90 women were killed every week in America; men murdered 9 out of every 10 women victims".[159] In Canada, a 1993 survey conducted by Statistics Canada revealed that 45% of the women surveyed had experienced violence from men with whom they had relationships.[160]

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[154] Law Reform Commission of Nova Scotia February 1995.

[155] Alberta Law Reform Institute, *Domestic Abuse : Toward an Effective Legal Response,* June 1995 at 55.

[156] H. Handerson; *Domestic violence and Child Abuse Source book* 1st ed. (USA: Frederick G. Ruffner, Jr., 2000) at 47.

[157] Ibid.

[158] M. McKenzie; *Domestic violence in America* 1st ed., (USA: Brunswick Publishing Corporation, 1995) at 13.

Perpetrators of violence towards men usually involve people they do not have relationships with such as strangers outside the home.[161] However, there are cases of battered women that kill their husbands as a result of threats of murder directed at them by these men.

Women encounter more violence at home than anywhere else and more often by people they know than by anyone else.[162] A study carried out in Benin, Nigeria revealed an increase in the proportion of women who get battered in Benin city.[163] B. A. Olokodana (a Magistrate)[164] stated that "the main ground of application, involved wife battering in 80% of the cases brought before him."[165] We can, therefore, safely state that women are the victims of spousal battering without contradicting the presumption that men are also battered.

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[159] Ibid.

[160] Supra note 155 at 10.

[161] A. Atsenuwa "Domestic Violence: Issues and Patterns" in J. Effah-Chukwuma, ed., *Breaking the Silence: Report of a one day National Workshop on Reporting Domestic Violence as a Crime in Nigeria*, 13 at 15.

[162] Women's Centre for Peace and Development (WOPED), *Bane of our times: A Fact File on Cases of Violence Against Women and Girls in Nigeria*, N. Okpala, I. Iwuanyanwu, K. Mbisike eds., (Nigeria: WOPED, 2000) at 21

[163] F.Omorodion, "The Social Context of Wife Battering" in Mere Nakateregga Kisekka ed., *Women's Health Issues in Nigeria* (Tamaza Publishing Company limited, 1992) 169 at 172.

[164] President Grade A Customary Court, Lagos Island local Government Lagos, Nigeria.

[165] Supra note 81 at 94.

Spousal battering is "a pattern of abuse that involves verbal, emotional and psychological abuse, and physical and sexual violence, to terrorise, intimidate, hurt, victimise, and impose a batterer's will on his spouse, ex-spouse or girlfriend."[166] This issue has been neglected in Nigeria because of the venue of the violence, which is the home, and the relationship between the victim and the perpetrator. A basic characteristic of African families is the issue of internal sovereignty.[167] Members of family have a duty to keep their affairs private and settle any arising dispute within the family. This regard for family sovereignty and privacy is the major factor affecting the reportability rate of this crime and hence, the lack of adequate data on the incidence of spousal battering. Other factors in this regard includes the fear of irretrievable breakdown of the family, divorce; over-dependence on the batterer, and existence of discriminatory laws, which makes it difficult for women to come forward and assert their legal and fundamental human rights, fearing triviality of their case.[168] Women complainants may become ridicule in their neighbourhoods.

The attitude of the law enforcement agents towards victims also contributes to the non-reporting of the crime. The police often commence investigation of complaints of domestic violence by asking women irrelevant questions such as, what the women did to trigger the abuse?[169] Women have often found it difficult to convince law enforcement officials to take action in domestic disputes. The law itself has encouraged this inactivity by the lack of positive legislation against this crime; as a result of this and stereotyped cultural belief in the subordination of women, this offence is not treated as a crime.[170] These factors however, do not justify the nonchalant attitude by the police towards prosecuting the perpetrators.

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[166] Supra note 158 at 8.

[167] Supra note 81at 8.

[168] Ibid. at 8 & 9.

[169] Supra 161 at 4.

IV. Power of Arrest

A police officer in Nigeria has powers to arrest any person who has committed, or whom he reasonably suspects to have committed, an indictable offence. This power accords with the police duty to protect life and property of the citizens of Nigeria and is to be exercised within the reasonable ambit of the law. Arrest can be effected with or without a warrant of arrest.[171] Most arrests without warrants are done to expedite arrests and prevent further delays. A police officer may effect an arrest without a warrant, of:

> "(a) any person who he finds committing a felony, misdemeanour or a simple offence or who he reasonably suspects of having committed or being about to commit a felony or breach of peace.
>
> (b) any person who any other person charges with having committed a felony or misdemeanour.
>
> (c) any person whom any other person
>
> i) suspects of having committed a felony or misdemeanour or
>
> ii) charges with having committed a simple offence, if such other person is willing to accompany the

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[170] Ibid. at 10.

[171] S.10 & S.22-29 Criminal Procedure Act s.56 &61 Criminal Procedure Code (applicable to both Southern and Northern Nigeria respectively).

> police officer to the police station and to enter into recognisance to prosecute such charge."[172]

The Constitution states that "members of the Nigerian police force shall have such powers and duties as may be conferred upon them by law."[173] The Police Act defines the powers and duties of Nigerian police.

A battered woman has a right to avail herself of the provisions of the Police Act, so as to initiate an arrest of her batterer. The law enforcement agent is authorised by the law to commence action on the case, and not to treat the matter with levity. However, occasionally, law enforcement agents have commenced action, but upon the arrest of the batterer, the woman pleads for leniency or forgiveness for him. The woman takes into consideration the economic loss and the danger she faces upon the granting of bail to the batterer. This has also contributed to the negative attitude of the police towards domestic violence.

It is suggested that modes other than criminal charges should be looked at for prosecuting offenders- such as a civil charge. Chapter Four addresses better modes of prosecution.

Until recently, a battered woman who escapes her batterer has had no protection in Nigeria. The woman was left alone by the law, the law enforcement agents or friends, in her bid to seek refuge. In some societies in Nigeria, a woman who flees her batterer's home to her parents house is frequently sent back there to settle the matter. A battered woman faces greater risk when she escapes from her batterer. When there is no place to hide, she returns home and the cycle of violence repeats itself.

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[172] S. 24 (1) Nigerian Police Act.

[173] S.214(b) Constitution of the Federal Republic of Nigeria 1999.

A small minority of battered women in Nigeria, now have a place of refuge. In May 2001, a non-governmental women's rights organisation, Project Alert on Violence Against Women, established the first shelter for battered women and their children.[174] "Sophia's Place", is a temporary, safe and confidential shelter for women and their children, whose lives are threatened and are desperately in need of a place of refuge. This shelter will temporarily house, female survivors of violence, which include sexual harassment and assault, physical assault, spouse battering, and widowhood rites. The main services to these women will be protection from their abusers, one-on-one group counselling services, and legal aid. This shelter can only house twenty women and their children at a time, and, due to the huge demand anticipated, the women will not be allowed to stay beyond four weeks.

Nonetheless, this is a step forward. Although problems are envisaged, such as lack of funds to expand and danger to these women after the end of the stipulated period, these women will receive adequate care and love needed, and proper counselling during their four week stay which they lacked at home. The step taken by Project Alert on Violence against Women, ought to spur the government to take more initiatives to ensure the protection of women and children.

Criminalization of spousal battering will be an initial step towards creating an awareness that this is a crime against womanhood, and also help in protecting women from violence in the home, since the present laws in Nigeria expressly or impliedly condone this act. Criminalization alone, however, does not guarantee the prevention of violence. The police and other actors in the justice system may still be reluctant to view the batterer's conduct as deserving of legal sanction. Battered women may also remain reluctant to reveal the fact of their abuse to others. Thus, the attitude of those charged with enforcing the new law must be scrutinized, modified in order to achieve ultimate compliance with the law. Nevertheless, the lack of credible laws against spousal battering does not justify the criminal justice system response towards prosecuting this crime. That both parties are in an intimate relationship does not reduce the rights of the woman to adequate protection from violence like any other individual. Violence against women in Nigeria is not considered as a human rights issue. This originates from the cultural stereotyped ideology in the society which views this, as a private issue and insists upon female subordination in a male dominated society.[175]

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[174] F. Okafor, "Group Launches Shelter for Battered Women, Children" *Vanguard Newspaper* Nigeria, online: <http://www.vanguardngr.com/21052001/sw424501.htm> (date accessed: 23 May, 2001).

V. Modes of Spousal Battering

a. Psychological/Emotional Violence

The batterer uses this form of abuse to intimidate the victim. It can take the form of abusive language, making the victim feel worthless and shouting to create fear.[176] Threats can also be used to make them carry out wrong acts, such as prostitution. Psychological violence can also take the form of denying women the right to choose, freedom to express themselves, denial of emotional and economic support, and freedom of association.[177] The causes of psychological violence include unresolved issues of male inferiority. Such is the case where the woman has better educational qualifications and is advancing further in her place of work, or earns a better income, than her spouse. This inferiority degenerates into envy and results in frequent and unnecessary conflicts. The case of Mrs Roseline Okolie, murdered by her husband, vividly illustrates the extent to which psychological violence can escalate to physical violence. The couple's daughter testified that her mother was more economically prosperous than her husband and assisted her husband to incorporate a business. Her husband, then, informed her of his intention to marry another wife. Roseline was against this, but he still proceeded with it, and it resulted to their separation. Upon settlement of the matter by the extended family, the couple spent the night together which ended up being Roseline's last night.[178] Her daughter discovered her in the toilet. When she alerted her father, he simply ignored her.[179]

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[175] I. Okagbue, *Women's Rights are Human Rights*, (Nigeria: Nigerian Institute of Advanced Legal Studies Lagos, 1996) at 13.

[176] BAOBAB- for Women's Human Rights, *Violence Against Women*, 3rd ed. (Nigeria: BAOBAB, 2000) at 4.

[177] Ibid.

Psychological violence results in tension in the home, unfriendly environment, distorted personality, and can also lead to death, as in Roseline's case.

b. Sexual Violence

This is also an aspect of physical violence. It includes rape, prostitution, and procuring women to commit bestiality. Under Nigerian Law, rape is "sexual intercourse obtained by means of force, threat, blackmail, deceit (by impersonating her husband)[180] or coercion on a girl or woman, without her consent."[181] Penetration is a constitutive element of rape.[182]

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[178] Project Alert on Violence Against Women, *No Safe Haven: An Annual Report of Attacks on Women in Nigeria December 1999 - November 2000*, J. Effah-Chukwuma, B. Osakwwe eds.,(Nigeria: Project Alert, 2000) at 20.

[179] "Murder at Dawn" *Violence watch* 2:3 July- September 200 at 8.

[180] C.Okonkwo, M. Naish, *Criminal Law in Nigeria,* (London: Sweet & Maxwell, 1964) at 267.

"Marital rape" is a term that is unrecognised in Nigerian Law. It is expressly excluded under the Nigeria Criminal Code, which defines rape as

> "... an unlawful carnal knowledge of a woman or girl, without her consent, or with her consent, if the consent is obtained by force or by means of threat or intimidation of any kind, or by fear of harm, or by means of false and fraudulent representation as to the nature of the act, or, in the case of a married woman, by impersonating her husband."[183]

It further defines unlawful carnal knowledge as "carnal connection which takes place otherwise than between husband and wife" [184] without the woman or girl's consent. An order of divorce or separation from a court of competent jurisdiction revokes the implied consent to sexual intercourse between the spouses under Nigerian law. [185] Sexual Intercourse, without the wife's consent after this order is made would constitute rape.[186] Under Nigerian Law, a man that rapes his wife may be charged with assault, assault occasioning grievous harm, or wounding depending on the degree of injury suffered.[187] Sharia law has a similar provision, it also does not recognise marital rape.[188] Customary law further condones sexual violence by not prosecuting a man that injures his wife while raping her.[189] Mrs. Hayishat declined having sex with her husband, due to ill health and as a result of this he physically abused her. He then, charged her with wilful refusal to consummate her marriage in the customary court. The presiding magistrate reprimanded her for not indicating to her husband earlier that she was ill. He then pleaded with her husband not to divorce her, asked her to beg her husband and fined her.[190]

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[181] Criminal Code, 5 Laws of the Federation of Nigeria 1990 C- 77 S.357.

[182] Supra note 180 at 267.

[183] Supra note 181at S. 357.

[184] Ibid. at S. 6.

[185] Supra note 180 at 266.

[186] Ibid.

[187] Ibid. at 267

It goes without saying, that rape, as the perpetrator's exercise of power, over the victim goes against the *Convention on the Elimination of All Forms of Discrimination Against Women* which guarantees equality of men and women and accords both the same rights and responsibilities during marriage.[191] Both parties in a marriage have equal rights and one should not exercise undue power over the other.

The basic belief is that contracting a marriage enables sexual intercourse at any time upon demand. This means that a woman may not refuse her husband sex in the Nigerian society. Women would rather not speak about this since the law is not available to protect women, and they believe that if the man is not satisfied at home, he will find satisfaction elsewhere.

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[188] S.128 (2) Sharia Penal Code of Nigeria.

[189] Supra 176 at 20.

[190] Supra note 80 at 115.

[191] Article 16 Convention on the Elimination of all forms of Discrimination Against Women.

In contrast, women in Malawi have recently started advancing a law that will make marital rape a criminal offence punishable by imprisonment. Under the new Domestic Violence Act 1998 in the Republic of South Africa, marital rape is an offence not only between parties married under statute but also in customary and religious marriages.[192] It is hoped that this will generate awareness of this crime in other African countries, such as Nigeria.

c. Social Violence

In the Nigerian context, this is defined as " unhealthy or hostile interaction, practices and relationships between various members of the family."[193] This is closely linked to psychological violence. In an extended family there are more potential batterers other than the husband. The unreported case of Mrs. Fatima Ajiroba illustrates this form of violence, she was killed by her brother-in-law. He became envious of Fatima because her husband was buying her material things. Her brother-in-law preferred that his brother spend his money on other investments rather than on his own wife. After she sent his child on an errand, he beat her, and she died from the wounds.[194] In other words, he murdered her.

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[192] S. 15 Domestic Violence Act 1998.

[193] Supra note 81 at 53.

[194] *Champion Newspaper* Lagos Nigeria (27 May 2000).

d. Physical Violence

Physical violence is violence that causes harm to the physical body, and usually completes the cycle of destruction after all the other forms of violence such as emotional violence have taken place.[195] Physical violence includes pushing, beating, slapping, macheting, clubbing, and murder. The Nigerian media also reports increasing cases of acid baths and ritual killings of women.[196] In some parts of Nigeria it is the belief that some human organs generate quick money. This practise is fast gaining ground in Nigeria. For instance, it is believed that female genital organs (especially those of virgins) have a spiritual connotation, and are more powerful than male ones.[197] This belief is unfounded. What obtains is that these attackers would rather attack those that are not of equal strength with them, and this is the case with most women and their assailants, thereby making women prone to violence.

Acid attack is a mode of vengeance attack. Both men and women resort to this form of violence at the slightest provocation such as broken engagements and jilting. Fatima Akanmu was a victim of this form of attack after her boyfriend poured acid on her face while she was asleep, locked her up and fled.[198]

Physical violence, due to its outward manifestation, often receives more attention than other forms of violence. These other forms gradually degenerate to physical violence and are as much a form of violence as physical violence. Battering usually begins with psychological and social violence and ends with physical violence. In Nigeria, most recorded cases reported to the welfare officers and NGO's are cases of physical violence. The survey by Omorodion of case histories in Benin city (Edo State) reported to the welfare office between 1982-1988 reveals the women sustained injuries ranging from:

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[195] Supra note 81 at 55.

[196] "Man held over murder of wife and kid" (*The comet*, Lagos, 24 July 1999), "Pamela's Murder presents a hard nut for DOC (*Sunday Vanguard*, Lagos, 29 August 1999).

[197] Supra note 162 at 18.

[198] Ibid. at 30 - 31.

> "facial bruises being the most common (49.18%), facial injuries such as cuts on the mouth (34.59%), loss of a tooth, or more (.2%), and severing of the hand (1.64%)."[199]

During the interviews conducted, the victims complained of excessive beating from their husbands, and thought these men were operating from a negative force, often associated with evil spirits, sent to kill them.[200] This study reveals that physical violence indeed completes the cycle of destruction and it is the most common form of violence carried out on women, often due to the unequal power between these women and their assailants.

In another study conducted at Ile Ife (cradle of Yoruba people) in 1987, cultural frame work was used as a means to understanding domestic violence.[201] The study investigated what the modern day Yoruba perceive to be traditional views regarding violence against wives. The study revealed a lack of consistency over the traditional values. This can be attributed to various forms of developments, which has taken place over the years in Nigeria, and has resulted in the modern form of thinking which eventually affects the attitude towards wife assault.[202] However, it was noted that even though a more liberal view appeared to be developing, a quarter of those interviewed still supported the use of violence to control a recalcitrant wife.

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[199] Supra note 163 at 173.

[200] Ibid.

[201] Supra note 72 at 198-199.

[202] Ibid.

VI. Causes of Spousal Battering

Various factors have been adduced as causes of spousal battering in Nigeria, these includes poverty, traditions, and laws.

a. Poverty

Some authors have argued that poverty in Nigeria can be traced to the introduction of the Structural Adjustment Program (hereinafter called SAP) in 1986.[203] This program has resulted in the state perpetuating violence against Nigerians. Most Nigerian men often cast this anger on women on the slightest provocation.[204] This programme was created by World Bank in order to cause increased economic growth, and enable developing countries participate in the world trading system.[205] This objective failed, rather it further pauperised the poor countries and increased the wealth of the rich ones.[206] Consequently, SAP (adopted by thirty-six countries in sub-Saharan Africa) has brought Nigeria neither growth nor debt relief but increased mass poverty and misery.[207] The Nigerian government claimed to have embarked on SAP to "promote capital accumulation in a free market, to stop the corrupt system of obtaining import licences, and over-invoicing, and to reduce and rationalise importation."[208] In carrying out this objective, government sought to reduce expenditure by terminating government parastatals, which created employment for many civil servants.[209] This action lead to early retirement and retrenchment of civil servants. In addition, to the increased plight of Nigerians, subsidies were removed on many products and services, on the pretext of attracting foreign investors.[210] Thus the standard of living dropped due to increased cost of food, people could not afford health care and education. This had an added implication for women.[211] Subsequently, there was high inflation; families could not afford the basic necessities; which led to increased aggression, tempers rose and domestic violence ensured.[212] Where people are living in poverty, there is low standard of living, the human instincts strives for survival, aggression let loose can lead to violence.[213] Hence, this further justifies the Nigerian slogan "a hungry man is an angry man". Basically, economic squeeze and high unemployment creates tension in people, which eventually make them subject to anger at the slightest provocation. In such circumstances, women become targets of frustration.

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[203] P. Williams, "Women and Urban Violence: A reflection of the Structural Adjustment Program on Urban Violence in Nigeria" in I. Albert, J. Adisa, T. Agbola eds., *Urban Management and urban Violence in Africa,* (Nigeria: IFRA, 1994) at 418.

[204] Ibid.

[205] Structural Adjustment Programme, Online: <http://allafrica.com/stories/199911050086.html> (Date accessed: 14th October 2002)

[206] Ibid.

[207] Ibid.

b. Traditions

Generally in a patriarchal society such as Nigeria, men are allowed to have control over women and their property, due to the premium placed on female subordination and inferiority. Customs and beliefs become imbued with this hierarchy, and women are eventually treated as second class citizens in the society and even in their homes. The object here is not to criticise the tradition and customs of Nigerian people, but to reveal the gender discrimination infused into these customs.[214] Most of the harmful traditional practices are directed towards females and have been discussed in the foregoing pages. All these practices originate in tradition. These traditions are man made. Men are not supposed to be enslaved by them.

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[208] Supra note 203 at 419.

[209] Ibid.

[210] Ibid.

[211] Ibid.

[212] Ibid.

[213] Supra note 81 at 55.

Another aspect of tradition and domestic violence is cultural differences.[215] Each culture protects their customary beliefs and regard it as being superior to others. Criticising other traditional culture can trigger offence and result in violence. This can be avoided if spouses respect each others culture, and resolve any difference in love.[216]

c. Laws

Laws are enacted to protect every life in Nigeria, regardless of sex. Moreover, the law preaches equality under the law regardless of age , sex, religion, but in reality this does not obtain. One can then assume that the claim of law to gender neutrality is a myth.

The duty of the police is to "enforce the laws, protect life and property, apprehend and prosecute offenders."[217] If these laws are not strictly enforced, then perpetrators may go unpunished. The indirect condoning of spousal battering, under Nigerian laws would encourage men to continue to abuse women.[218] The following Chapter addresses in detail rights of women.

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[214] In the report of the Minster of Women Affairs Hajia Sani to the women's anti-discrimination committee, on July 2 1998, the committee noted that Nigeria's socio-cultural climate impeded implementation of the convention of the elimination of all forms of violence against women. That many traditional and customary practices such as polygamy, treatment of widows violated the human rights of women, and were not appropriate in the twentieth century.

[215] Supra note 81 at 54.

[216] Ibid.

[217] S.4 Nigerian Police Act.

Women are often blamed for the battering, with the result that self blame is often instilled in the victim. She does not only blame herself but the society also blames her. Women in violent relationships have been found to record the highest rates of characterological and behavioural self blame.[219] Characterlogical self blame is "a belief that one is to blame for the abuse because of physical appearance or personality traits."[220] In behavioural self blame, the "woman has the believes that she is to blame for the abuse because of nagging or failure to remove herself from the abusive situation."[221] Most Nigerian women fall into the latter category. Due to the attitude of the society towards divorce, they will rather suffer in silence than to leave the abusive relationship. Some of the many reasons Nigerian women are blamed for battering seem rather unrealistic and unbelievable but these are significant grounds on which women are blamed for the abuse and are peculiar to the Nigerian society.

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[218] Supra 163 at 180.

[219] O'Neill, Melanie L, Kerig & Patricia K, "Attributions of Self Blame and Perceived Control as Moderators of Adjustment in Battered Women" (2000) 15 Journal of Interpersonal Violence 1036 at 14p.

[220] Ibid.

[221] Ibid.

VII. Grounds on which Women are Blamed for Spousal Battering

a. Sexual Deprivation

The refusal by a woman to have sex with her batterer may provoke the man, and violence may ensue. According to Omorodion, 10.66% of the women surveyed complained of this form of violence.[222] The women's reason for declining sex includes fatigue, to punish their husbands for neglecting their martial responsibilities, for previous abuse and not feeling like having sex at the time their husbands demanded it .[223] The men then get provoked especially in monogamous homes and attempt to force women to comply with their desires. A struggle leads to severe beating and injuries to these women. Such will amount to marital rape, which is unrecognised in Nigerian laws. If the couple were separated (which is unlikely), the man can be charged for assault or wounding and could be sentenced to imprisonment for 2 - 7 years.[224]

b. Presentation of Meals

Absurdly, this is a significant ground whereby a woman is blamed for forsaking her most important duty to her husband. Where the meal is presented late, or there is no meal for one reason or another, the woman takes the blame and may be abused verbally or physically. Some men can also get physically abusive if someone other than their wives prepare their food. In Omorodion's study one of the men interviewed stated as follows

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[222] Supra 163 at 175.

[223] Ibid.

[224] Supra note 176 at 20.

> "can you imagine my wife sitting down while the children or someone else prepares my meals?..... these same people place the food on the table with such disrespect while my wife idles around the house... He stresses that she is supposed to hold the bowl of water for the husband to wash his hands before meals."[225]

Most men have deviated from this traditional practice but it still obtains in certain parts of traditional Nigerian society.

c. Nagging

This often results in physical violence in the home. Women are often blamed for this act. Men usually complain that women always have something to say about even the most trivial matter and often use physical violence to stop this.[226] They end up discussing this at length, and equally committing the same offence as women.

d. Disrespect

Disrespect for the husband and her in-laws can result in battering. For in the Nigerian society, a woman marries into her husband's family and has responsibility towards them as well as her husband . Disrespect towards her in-laws can result in beatings from the husband or her in-laws.[227]

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[225] Supra note 163 at 176.

[226] Supra note 81 at 58.

[227] Ibid. at 55.

e. Inability to Produce Male Children

In Nigeria, motherhood is primarily seen as a woman's duty and a woman who has not experienced this "joy" is often not regarded as woman.[228] Amongst the Yoruba's of Western Nigeria she is referred to as "*apere*" (a basket- she can't retain a child in her womb). Polygamy is often used as an excuse to have as many children as possible due to the social status attached to this institution.[229]

African culture values wives who give birth mostly to boys and is responsible for the prevailing belief that a male child has more economic and social worth than a female child.[230] As a result of this, some women are often disappointed when they conceive female children, due to their desire to please their husbands. The training of female children is sometimes left as the responsibility of their future husbands due to the liability incurred in meeting their needs.[231] If no child is forth-coming from the marriage, Nigerian society regards it as no marriage. Furthermore, these men see it as lowering their status and dignity to submit to medical examinations and rather than being humiliated by the result, they would preferably assume that it is the woman's fault.[232] This concludes that in the absence of sons, the birth of a girl child is often times a cause of lamentation.

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[228] V. Besanty, "Female Victimization in Africa and Indian Literature" Online: <http://www.qc.edu/ENGLISH/Projects/postcol/articles/india/besanty.html> (date accessed: 27 August 2001).

[229] Ibid.

[230] Ibid.

[231] Ibid.

[232] Supra note 80 at 144.

Nigerian women have been abandoned by their husbands for the lack of bearing male children. Although orthodox medicine can now determine the sex of a child, it is impossible for only the woman to reproduce. These men often experience amnesia, in that they forget they are parties to the conception of their children. This discriminatory practice of abandonment is in itself, against the 1999 Constitution of the Federal Republic of Nigeria, which guarantee's the equality of both men and women.[233] As indicated earlier, the *Convention for the Elimination of All forms of Discrimination Against Women* urges party states to advocate for equality between men and women during marriage.

Nigerian women form 50% of the population and must be involved in development efforts. They cannot do this if they are still being treated as second class citizens having no legal right to advocate their safety, and having their issues trivialised by the laws and those in authority. To make a great leap towards the future, those who form 50% of the population who are still languishing in ignorance, illiteracy, cultural oppression, and violence must be liberated. The failure by the Nigerian government to view violence against women as a human rights issue results from a derogatory cultural discrimination that have been imbibed by the society, which emphasises male superiority over women.

Domestic violence, no matter how viewed, is a crime. It is not less a crime than other crimes that come under the category of a felony. Moreover, domestic violence is the root cause of violence in the society as "a dysfunctional home produces dysfunctional individuals."[234] This eventually goes in to the society, the result being a dysfunctional society. A family that breeds violence will ultimately affect the nation. According to Auguste Comte:

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[233] S. 42 Constitution Federal Republic of Nigeria 1999.

> "The true social unit is the family... families become tribes, tribes become nations."[235]

The family is indeed the unit of the society, and all must be done to protect this institution.

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[234] Supra note 161at 4.

[235] C. Lewis, *Masters of Sociological Thought: Ideas in Historical and Social Context*, 2nd ed. (New York: Harcourt Brace Jovanovich, 1971) at 10.

CHAPTER 2

WOMEN'S RIGHTS UNDER NIGERIAN LAW: AN EVALUATIVE ASSESSMENT

I. Introduction

> "The state is male in the feminist sense. The law sees and treats women the way men see and treat women. The liberal state coercively and authoritatively constitutes the social order in the interest of men as a gender, through its legitimizing norms, relation to society and substantive policies... Substantively, the way the male point of view frames an experience is the way it is framed by state policy...Objectivist epistemology is the law of law. It ensures that the law adheres to its own highest ideal of fairness. Like science it emulates such law not only reflects a society in which men rule women; it rules in a male way."[1]

Professor Catharine MacKinnon[2] criticizes the male norm in law. In her view, male dominance and sexual inequality are integral parts of law. The laws in a state do not reflect the legally accepted ideology of "equality under the law". In Africa for example, a greater percentage of the lawmakers are male, due to this disparity, most laws reflect the notion of male superiority.

Ideally, laws exist for the protection of all individuals in the state, regardless of sex. Law should ensure equality to all. In fact, this ideal is enshrined in almost all instruments governing states with liberal democratic values. As such, states that conform to liberal democratic principles have constitutionally entrenched commitments to equality. In patriarchal societies, such as Nigeria, inequality exists in the composition of members of the legislative houses[3]. This results in more gender stereotyped laws being passed, which discriminate against women both directly and indirectly. The few women that participate in decision-making are reluctant to bring up gender issues primarily because men appoint them. Consequently, such women, in most cases, would adhere to the status quo or in the alternative remain passive.

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[1] A. Chase, "Lawyers and Popular Culture: A review of Mass Media in Portrayals of American Attorneys" (1986) Am. B. Found at 297.

[2] Feminist critic in the field of legal studies.

Still, law as an instrument of social engineering plays an indispensable role in the administration, protection and promotion of human rights. Although laws in Nigeria appear to guarantee this basic function, the law has been a key instrument in the perpetuation of the subjugation of women and the denial of their basic freedom. Some laws in Nigeria weigh in favour of men, leaving women out, and not giving them the same rights and privileges on adequate protection. Most of these laws have their roots in customs and traditions. As with most Africans, Nigerians are bound to their culture, and what ensues is the subjection of the people to traditions that are resistant to meaningful change.

This Chapter examines the constitutionality of the present Nigerian laws that violate and discriminate against the rights of Nigerian women. This examination is done against the backdrop of women's rights as entrenched in the Nigerian Constitution. Nigerian constitutional law as part of the Nigerian legal system will also be examined, so as to highlight the process the judiciary follows as regards the rights of individuals under the provisions of the Constitution. In the same vein, reference shall be made to Canadian and American cases in which courts have upheld women's rights as constitutional guarantee. Since this Chapter deals with an evaluative analysis of laws that are discriminatory against women in Nigeria, a background analysis of the hierarchical composition of Nigerian laws lets one understand law's binding effect on the people and how discriminatory customary practices, that are inconsistent with the Constitution can be challenged. Preceding this background analysis is an overview and a discussion of women's rights in Nigeria.

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[3] The Nigerian legislature is made up of the National Assembly at the federal level and a House of Assembly for each state. The National Assembly consists of the Senate and House of Representatives. The senate consists of three senators from each state and one from the Federal Capital Territory, Abuja, while the House of Representatives consists of three hundred and sixty members representing different consistencies. 16 members represent Rivers State, out of which none is a woman. At the state Level, there are 16 commissioners and about 5 special advisors, only 3 are women. Out of 46 ministers in Nigeria, only 5 are women. Out of 106 Ambassadors nominated, only seven are women. This in itself is a global issue. In most countries including the developed ones the distribution of men-women in power is discouraging. Women basically form less than half of the decision making power.

II. Overview of Women's Rights in Nigeria

Historically, in the 1900's, prior to colonialism, Nigerian women wielded political and economic power. Colonialism and subsequent independent Nigerian governments have stripped them of these powers. The contemporary Nigerian woman still suffers political and social discrimination within the society, and the home, which supposedly is a safe haven, is constantly the seat of violence.[4] The laws in Nigeria have also been found to be discriminate against women; this has eventually led to loss of confidence in the legal system. Basically, women are demanding recognition of their rights as human rights. This itself suggests the equality of men and women and the recognition of gender as a basis for discrimination in the enjoyment of their fundamental human rights.[5] Consequently, all men and women are entitled to these rights. Neither gender, custom nor law should bar the actualisation of these rights.

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[4] Victoria B. Tashjian, "Nigeria: Women Building on the Past"in L. Walter, ed., *Women's Rights : A Global View* (Connecticut: Greenwood Press, 2001) 155 at 158.

Most Nigerian women basically suffer most of the oppression of their rights within marriage. As stated in the preceding chapter, in the traditional society, Nigerian women usually acquire power through birth lineage, which gives them a form of recognition within the power structured society.[6] However, upon marriage, this authority diminishes, due to her duty to be subordinate to her husband.[7] This subordination and loss of rights diminishes the woman's self esteem. When battered by her husband, she endures this maltreatment, rather than report this incident to a society that has the same misconception and beliefs as her husband.

Prior to colonialism, (before 1900) men often faced ridicule from women in the village when they abused their wives.[8] These women gathered together to humiliate the man until he promises to make amends, otherwise his hut could be destroyed.[9] These women exercised their power based on collective strength, which no man dared to challenge.[10] This collective strength has gradually been effaced from the society. Today, a battered women is left alone to carry her own burdens in the face of a society and laws that disregard her human rights. However, some NGO's that *inter alia* deal with women's rights have started to provide legal assistance to victims of human rights abuse, to create awareness and to build public opinion and opposition to government. They encourage women in the diligent prosecution of their rights. An average Nigerian woman is not aware of her rights against violence, and most NGO's have made considerable efforts in educating women about these rights against violence. The liberation of Nigerian women has to start with raising their greater awareness of their human rights in general, and in relation to men, and increasing their desire to know and act to ensure these rights. Education would be an avenue to the realisation of these rights against violence and an indispensable tool and weapon available to women in their right against gender discrimination and further enable them to stand up for equality and justice.[11] The Nigerian woman can, through this dynamic education process, establish her fundamental human rights. This process of educating women could be hindered by religious, economic and cultural constraints.[12] Realising this, the Nigerian government has made policies towards ensuring that parents give their daughters education. Furthermore, the government has also levied penalties against those parents who withdraw their female daughters from school.[13] Society also has a great part to play in the liberation of women. This liberation would start from the ideology of women, as second-class citizens in constant subordination to men.[14] With all her rights being stripped from her and the subordinate position she assumes upon marriage, is the Nigerian woman seen as a person who deserves to be accorded all rights a Nigerian citizen has without regard to her gender? The laws and the cultural stereotype in Nigeria answers this question negatively. Inheritance law does not see her as a person with her own individual rights as in certain localities in Nigeria property passes to her through her male children.[15]

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[5] A. Atsenuwa, "Human Rights Protection of Vulnerable and Marginalised Groups" in A.O Obilade, ed., *Human Rights Teaching in Schools* (Lagos, Constitutional Rights Project (CRP), 1999) 209 at 214.

[6] M. Ogundipe-Leslie, *Recreating Ourselves: African women and Critical Transformations*, (New Jersey: Africa World Press, INC, 1994) at 75.

[7] Ibid.

[8] Supra note 4 at 157.

[9] Ibid.

[10] Ibid.

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[11] Hon. C. Oputa, "Women's Reproductive Health Rights" in T. A. Akumadu, ed., *Beats of Burden: A Study of Women's Legal Status and Reproductive Health Rights in Nigeria* (Lagos: The Women's Rights Project Civil Liberties Organisation, 1998) 123 at 138.

[12] Supra note 6 at 139.

[13] "Charter for womanhood", Vanguard (Nigerian) Newspaper (14 June 2001).

The title given to various Nigerian enactments are in themselves discriminatory, such as the *Workmen's Compensation Act*[16]. This Act in itself refers to men alone, when both men and women constitute the work force. Countries like Canada have made such statutes gender neutral. In Manitoba, for example, the *Workmen's Compensation Act*[17] is now called the *Worker's Compensation Act*[18]. Eliminating discrimination against women is reflected in such laws by the use of gender neutral language.[19]

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[14] Supra note 6 at 82.

[15] Ibid.at 140.

[16] 1990 vol. (xxiv) Laws of the Federal Republic of Nigeria 1990 cap 470.

[17] R.S.M 1970 c. w 200.

[18] R.S.M 1987, c. w200.

[19] Various Canadian Universities have also developed a style guide for preferred language usage. This was done in order to forestall the discriminatory languages from being used. For example, in York University, male or female pronouns are avoided when referring to groups composed of both men and women or of unspecified gender. The use of word combinations such as him and her, his/her and s/he is avoided. When referring to two groups of opposite sexes parallel language is preferred e.g men and women, ladies and gentlemen husband and wife (not man and wife). Also unless the role of wife, mother, sister or daughter is important to the context, identifying women by these terms is to be avoided. Marital status should also not be noted unless pertinent.

The Nigerian Constitution guarantees and protects rights of women against discrimination. The practical implementation of these constitutional provisions is yet to be attained . Customary practices have been the major obstacle to the attainment of these rights, due to their long usage, these practices have now become part and parcel of the people. A discussion of Nigerian Constitution highlights how these various customary practices can be challenged in court for inconsistency with the Constitution.

III. The Nigerian Legal System

Since the theme of this Chapter is the analysis of laws in Nigeria, it is appropriate to provide a background analysis of the hierarchical composition of Nigerian laws, so as to provide a proper understanding of their binding effect.

Colonisation by the British resulted in the reception of English laws into Nigeria in 1863. The sources of Nigerian law are:

a. "Nigerian Legislation: This consists of statutes and subsidiary legislation. Nigerian statues encompass: Ordinances, Acts, Laws, Decrees, and Edicts.[20] Subsidiary legislation is law enacted in exercise of powers given by statute. It consists of rules, orders regulations, bye-laws and other instruments made under the authority of statutes.

b. English Law, which consists of:

   1. The received English law, which was introduced into Nigerian Law by the Nigerian legislature and consists of:

      (i) The common law

      (ii) The doctrines of equity

      (iii) Statues of general application in force in England on January 1, 1900

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[20] Decrees and Edicts are legislation made by the military government at the federal and state levels, respectively.

(iv) Statutes of subsidiary legislation on specified matters.

2. English law made before October 1, 1960 (Nigerian independence day) and extending to Nigeria and introduced into Nigerian law by the English Legislature, it must be repealed by the appropriate authority in Nigeria before it is no longer applicable in Nigeria, regardless of its applicability in England.

c. Customary law

d. Judicial precedent."[21]

Every citizen of Nigeria is expected to comply with all these laws. However, with respect to customary law, a custom is only enforced against the people it binds which are members of that community in which the custom is recognised and applied.[22] Customary practices in different communities vary, and each of the over 250 ethnic groups has its peculiar customary practices. Such practices constitute customary law in Nigeria. Customary law in Nigeria does not recognise domestic violence as a gross violation of the fundamental human rights of women. This has been identified in Chapter one as a principal source of discriminatory practices against women. By allowing these discriminatory practices to creep into Nigerian legislation or by entrenching these practices in legislation, the state is ultimately giving credibility to spousal battering and, in the long run, violence against women.

Customary law in Nigeria comprises "ethnic customary law and Moslem law".[23] Ethnic customary law exists in every ethnic tribe in Nigeria and binds the members of that tribe, while

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[21] A.O. Obilade, *Nigerian Legal System,*(Great Britain: Sweet & Maxwell Limited, 1979) at 55.

[22] Ibid. at 83.

[23] Ibid.

Moslem law is religious law applicable to Muslims.[24] Presently, some Northern states have declared it to be the principal governing law in the states. The existence of various customs identified in different ethnic groups does not give coherence to the Nigerian Legal system and this fact, further complicates it. Proof of existence of ethnic customary law is required before it is admitted and enforced, due to its unwritten nature. Expert testimony on the existence of customary law usually is biased and more inclined to the side on whose behalf they appear.[25] The onus of proof rests on the party alleging its existence, except if its application is acknowledged in a particular community, due to constant reference to it, or by judicial notice.[26] The common feature of customary law is that it is a "mirror of accepted usage" in the community in which it applies.[27] A court can observe and enforce applicable customary law which is not "repugnant to natural justice, equity and good conscience, or incompatible either directly or by implication with any law for the time being in force."[28] The customary law also must not be contrary to public policy.[29] A custom will not be held to be contrary to natural justice simply because it fails conform or differs from the code of acceptable behaviour in a developed society such as English law; but when justice will not be done between the parties as a result of the application of this custom.[30] As evidenced in the previous Chapter, some of these customs consist of archaic traditional practices that deprive women of their fundamental human rights. Nonetheless, it is viewed as part of local custom that must be passed from one generation to another unadulterated; even where it poses as a health hazard. These practices tend to be harmful to women and violate their reproductive rights, rights to education, personal liberty, right against inhuman and degrading treatment, which are incompatible with the provisions of the 1999 Constitution. Some other laws that entrench these practices are also incompatible with the Constitution, as shall be examined below in this chapter. The reproductive rights of women are also expressed in the provisions of the Nigerian Constitution that guarantee the fundamental human rights of every citizen. Customary law, on the contrary, does not recognise women's reproductive rights, but rather, exploits it.[31] Under Nigerian customary law, a woman cannot refuse the sexual advances from her husband, even if the basis of refusal is in her health. As a result, marital rape is unknown to customary law. In some communities in Nigeria, men can have sexual intercourse with women other than their wives; this increases the risk of contacting sexually transmitted diseases.[32] The Women's Anti-Discrimination committee in its Press Release at the 395th Meeting on July 2, 1998, noted that the "traditional practices and cultural atmosphere of Nigeria impeded the full implementation of the provisions of *Convention on the Elimination*

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[24] Ibid.

[25] Justice A.P. Anyebe, *Customary Law: The War Without Arms* (Enugu, Nigeria: Fourth Dimension Publishers, 1985) at 9.

[26] Ibid at 11.

[27] *Owonyin* v. *Omotosho* [1961] 1 All N.L.R. 304 at 309.

[28] S. 14(1) (2) (3) Evidence Act Laws of the Federal Republic of Nigeria 1990.

[29] Ibid. at (3)

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[30] Supra note 21 at 101

[31] Dr. A. Emeke "Women's Reproductive Health and Rights: Customary Law and Practice in Nigeria" in T.A. Akumadu, ed., *Beats of Burden: A Study of Women's Legal Status and Reproductive Health Rights in Nigeria* (Lagos: The Women's Rights Project Civil Liberties Organisation, 1998) 107 at 114.

[32] Ibid. at 117.

of All Forms of Discrimination Against Women (hereinafter called CEDAW)."[33] It further observed that, this also impacted development of the country.

Customary law remains in operation principally because it reflects the values of traditional communities and is an admirable instrument for regulating activities and relations within such communities. Nonetheless, some archaic practices in traditional African societies are obviously detrimental to women and girls and should be abolished for hindering the development and attainment of women's rights in democratic Nigeria. For instance, the former minister for Women Affairs and Social Development, in her report to the Women's Anti-Discrimination Committee, stated that "certain cultural and traditional practices and beliefs still constitute obstacles to the rights of the Nigerian woman on issues of marriage, inheritance, landownership or real estate development, and further stated that women were subjugated in marriage, divorce and in widowhood."[34] The experts on the committee observed that many traditional and customary practices violate the human rights of women and slow the pace of emancipation and were, therefore, regarded as "inappropriate for the twentieth century."[35]

The society is indeed dynamic, so what suited pre-colonial and colonial days no longer serves contemporary times. Most women suffer from these practices. They erode the rights of women to dignity, self-respect and security of the person. These cultural practices have been imbibed by Nigerian society for too long, to the detriment of the Nigerian people. Women have to realise that these practices deny them their fundamental human rights. Efforts have to be made to make the women aware of theses rights. This work will be followed by a gradual departure from these practices. Changing the mentality of the people will itself be a great leap towards the eradication of violence against women in the Nigerian socio-cultural environment.

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[33] "Women's Anti-Discrimination Committee Takes Up Report of Nigeria", Press Release WOM/1065, July 2, 1998 Online: <http://www.un.org/News/Press/docs/1998/19980702.wom1065.html> (date accessed: 16th October 2002)

[34] Ibid.

[35] Ibid.

IV. An Analysis of the Constitutionality of the Present Nigerian Laws that Discriminate Against Women.

The constitutionality of the laws that persistently discriminate against Nigerian women will be examined against the 1999 Constitution of the Federal Republic of Nigeria. The determination of the constitutionality of these laws by the courts constitutes part of the constitutional law of Nigeria. It is however, important to discuss the nature of constitutional law in Nigeria, to appreciate both how an individual seeks redress from the court and the process by which the court declares a statue void for inconsistency with the Constitution.

a. Constitutional Law in Nigeria

Nigerian constitutional law defines the authority that various organs of government have in making laws and ensures the strict observance of this power according to the provisions of the Constitution. As in most jurisdictions, the bulk of Nigeria's constitutional law comprises a single document called the "Constitution". The 1999 Constitution of the Federal Republic of Nigeria is a moderately modified version of 1979 Constitution. This

Constitution is by its nature rigid and can only be amended by a special procedure. It is not only a binding law, but also the supreme law.[36]

The Nigerian Constitution has been referred to by different authors as the Nigerian "Grundnorm"[37] According to Sir John Salmond, the Grundnorm is "the ultimate principle from which all other norms derive their existence and which in itself is self-existent."[38] Hans Kelsen refers to the Grundnorm as the "Basic norm": "a common source, the bond between all the different norms of which an order consists."[39] It is the foundation from which all other laws derive their validity. Therefore, the validity of any law will be tested in accordance to its compliance with the basic norm. Any law contrary to it will, to the extent of its inconsistency and for all purposes, be null and void.[40] In the present democratic regime, the 1999 Constitution is the Grundnorm or basic law of the land. It has an overriding force in Nigeria and invalidates inconsistent laws.

Legislative power at the federal level vests in the National Assembly, which consists of a Senate and a House of Representatives.[41] If the National Assembly enacts a law and it is inconsistent with another law also validly enacted by this body, but both laws are consistent with the provisions of the Constitution, a rule is required to decide which prevails.[42] A law that has received presidential assent after being passed by the National Assembly can still be declared void on the basis of it being contrary to the provisions of the Constitution.[43] Subject to the provisions of the Constitution, "the Federal Government of Nigeria has the power to make laws based on matters in the exclusive list (matters exclusively reserved for the Federal Government), while the Federal and State governments both share the power to make laws on matters in the concurrent legislative list."[44]

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[36] *Oyewole* v. *Shehu* [1995] 8 N.W.L.R pt 414 at 487.

[37] P.Oluyede, *Constitutional Law in Nigeria*, 1st ed. (Nigeria: Evans Brothers (Nigeria Publishers) Limited, 1992) at 490.

[38] Ibid.

[39] H. Kelsen, *General Theory of Law and State*, (Cambridge: Harvard University Press, 1945) at 111.

[40] Supra note 36.

[41] *Constitution Federal Republic of Nigeria*, 1999 S.4(1).

A state law enacted by the State House of Assembly of a State that is inconsistent with any law made by the National Assembly shall be void to the extent of its inconsistency. The exclusive and concurrent legislative list consists of detailed and explicit issues, which these arms of government can legislate upon with little or no conflict arising as a result of separation of powers.[45] This illustrates the vivid hierarchy in the powers of the various arms of government to make laws. The State laws must be consistent with the federal laws and both must be consistent with the Constitution. These laws further derive their validity from the Constitution, Nigeria's basic norm.

The National Assembly must exercise the powers conferred on it by the Constitution in accordance with the provisions of the Constitution.[46] It has the power to alter the provisions of the Constitution.[47] This alteration, however, must be inline with the provisions of the Constitution. With respect to amendment of the provision regarding the creation of new states and of chapter four of the Constitution which deals with fundamental human rights, "not less than four fifths of all members of the National Assembly and two thirds of all the states must approve the proposal."[48] This power must herein be exercised in accordance with the provisions of the Constitution. This underlines the supremacy of the Constitution. The Constitution expressly states its supremacy to any other law:

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[42] Supra note 37 at 194.

[43] *A-G Bendel State* v. *A-G Fed & Ors* (1972) 11 S.C. 1.

[44] Supra note 41 at Schedule 1, (part 1and 2).

[45] Ibid. at Schedule 2 Part 1and 2.

[46] B.O. Nwabueze, *Constitutional Law of the Nigerian Republic* (London: Butterworths, 1964) at 106.

> 1. (1) "This Constitution is supreme and its provisions shall have a binding force on all authorities and persons throughout the Federal Republic of Nigeria"
>
> (3) If any other law is inconsistent with the provisions of this Constitution, this Constitution shall prevail, and that other law shall to the extent of the inconsistency be void."[49]

To this extent all other laws are subject to the Constitution and derive the validity from it and are void to the extent of their inconsistency with the Constitution. During the successive military regimes in Nigeria, some parts of the Constitution were conveniently suspended, to allow for the supremacy of a military decree over the Constitution. During the first Military uprising in Nigeria, the first casualty was the 1963 Constitution, the parts of it that were not suspended were held to be valid according to the provisions of Decree No.1 of 1966 and other decrees which were a creation of the military regimes.[50] Military decrees that usher the military regimes into power start by suspending provisions in the constitution that proclaim its supremacy and take over of power by means contrary to it. Such decrees have ousted the jurisdiction of the court of justice in questioning its validity.[51] Such action by the military can be seen as a way of silencing the provisions of the Constitution that deal with take over of power. The Constitution states that:

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[47] Supra note 41 at S.9 (1)

[48] Ibid. at S.9 (2) & (3) .

[49] Ibid at S.1 (1) .

[50] Supra note 37 at 494.

> "The Federal Republic of Nigeria shall not be governed, nor shall any person or group of persons take control of the government of Nigeria or any part thereof, except in accordance with the provisions of the Constitution."[52]

This vividly illustrates, that the means of take over of power adopted by the military regimes in Nigeria is contrary to the provisions of the constitution, and thereby, making military revolutions in Nigeria illegal.[53]

Nigerians have asserted that the 1999 constitution is a mere puppet of military decree's since the legal democratic process of involving the civil society in its formation was excluded.[54] Many non-governmental organisations have put pressure on the present government to review the Constitution. However, rather than giving heed to such demands which may cause a political outrage, the President Olusegun Obasanjo formed the Presidential Technical Committee, giving them the unilateral right to review the 1999 Constitution.[55]

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[51] Ibid.

[52] Supra note 41 at S.1 (2).

[53] J.O. Akande, *Introduction to the Nigerian Constitution,* (London: Sweet & Maxwell, 1982) at 2.

[54] Progressive report 2001, *Women of the world: Laws and Policies Affecting their Reproductive Lives, In Anglophone Africa.* (New York, The Centre for Reproductive Law and Policy,2001) at 74.

[55] Ibid.

However, for all intents and purposes, the 1999 Constitution still remains the supreme governing law in Nigeria.

With the supremacy of the 1999 Constitution now understood, it is important to discuss the role of the judiciary, in the interpretation of laws and administration of justice. This arm of government interprets the provisions of the Constitution and any other law that is inconsistent with it. Discussing this role further reveals the due process of law in Nigeria and particularly highlights the mode in which laws inconsistent with the Constitution are stuck down and declared void to the extent of their inconsistency.

b. The Role of the Judiciary under the Nigerian Legal System

An explanation of the court system in Nigeria cannot be separated from the role of the judiciary since judicial powers are vested in the courts, and not all courts have jurisdiction to interpret the Constitution.[56] Nigerian courts divide into superior and inferior courts, and courts of record.[57] Superior courts are courts of unlimited jurisdiction, although in practice this is far from the case, they have limited jurisdiction in that they are restricted to "the type of subject matter but not to the mere value of the subject matter of the case."[58] In contrast, inferior courts have limited jurisdiction as to the type and to value of the subject matter and are further supervised by the High Courts.[59] A court of record is a court that has "power to punish contempt."[60]

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[56] Supra note 41 at S.6(1).

[57] Supra note 21at 169.

[58] Ibid.

The Supreme Court of Nigeria, the apex of the court system, has both original and appellate jurisdiction. Its appellate jurisdiction includes "the power to hear and determine appeals from the Court of Appeal on decisions in any civil or criminal proceedings and on questions as to whether any provision of chapter 4 (fundamental human rights) of the Constitution has been, is being, or is likely to be, contravened in relation to any person".[61]

Directly under the Supreme Court is the Court of Appeal. It has original and appellate jurisdiction. It also has, in addition, such other jurisdiction as conferred by the Constitution, and a jurisdiction similar to the Supreme Court's with respect to the interpretation of the Constitution.[62]

The Federal and State High Court both have jurisdiction to determine any civil cause or matter including fundamental human rights. The difference between the jurisdictions vested in the courts is in relation to matters involving the Federal Government of Nigeria or any of its agencies.[63] The Constitution states that:

> "Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of the provisions of this section and may make such orders, issue

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[59] Ibid.

[60] Ibid.

[61] Supra note 41 at S. 233 (2) (c).

[62] Ibid. at S 241 (1) (c) & (d).

[63] Ibid. at S.251 (1) (r) (s) & S.252.

> such writs and give such directions as it may consider appropriate for the purpose of enforcing or securing the enforcement within that state of any right to which the person who makes the application may be entitled under this chapter."[64]

An appellant can only initiate such an application before the high courts. In *Onwo* v. *Oko*[65] the Court held *inter alia* that:

> " Unlike in most civil actions, an infringement of fundamental right ... must be commenced in the High Court of the State where the contravention of the right occurred; and it is the High Court of that State that has jurisdiction."[66]

The Sharia Court of Appeal and Customary Court of Appeal exist at both the federal and state levels. The Sharia Court of Appeal of the Federal Capital Territory and of the state has appellate and supervisory jurisdiction in civil proceedings involving "questions of Islamic personal law, such as marriage, guardianship and succession and such other jurisdiction as may be conferred upon it by an act of the National Assembly or the law of a state, respectively."[67] The Customary Court of Appeal exercises appellate and supervisory jurisdiction in civil proceedings involving questions of customary law.[68]

Magistrate Courts exist in each state and fall into a number of classes' this classification determines the jurisdiction and powers each magistrate court possesses.

The Supreme Court, Court of Appeal and Federal and State High Court all have the jurisdiction to determine cases of any individual who seeks to challenge any law or executive or administrative action based on its inconsistency with the Constitution. Only these courts have jurisdiction to entertain questions in any civil or criminal proceeding relating to the interpretation of the Constitution.

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[64] Ibid. at S. 46 (2).

[65] (1996) 6 N.W.L.R Part 456 at 584.

[66] Ibid. at 589.

[67] Supra note 41 at S.262 (1) & 277(1).

[68] Ibid. at S.267 & S.282.

Having established this fact it is germane to discuss the due process of constitutional interpretation in Nigerian courts.

c. Due Process Under Nigerian Law

In every liberal democratic society, procedures are inevitable. Without them, the legal system will not function effectively in the dispensation of justice.[69] Procedures are indispensable in any legal system in order to ensure a fair adjudication of the specific subject matter.[70]

Due process ensures a fair trial by securing the fundamental process in which a matter is adjudicated in a court of competent jurisdiction. The rule here guarantees an individual's right to fair hearing, whereby the rule pertaining to fair hearing must be attained such as the giving of adequate notice and the various governing bodies ensuring that this is adequately maintained.[71]

The legislature has to ensure that laws enacted are not inconsistent with the provisions of the Constitution, since these laws are administered by the Courts and can be challenged if they are *ultra vires* the Constitution.[72] Military regimes in Nigeria often established military tribunals that adjudicated matters in the same manner as civilian courts. Ouster clauses are often utilised by these tribunals to restrict the jurisdiction of civilian courts, therefore, having the unilateral rights to determines cases and violate the rules of natural justice.[73] However, in *N. K Adamolekun* v. *The council of the University of Ibadan*[74], the court held that

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[69] D. J. Galligan *Due Process and Fair Procedure* (New York: Oxford University Press INC, 1996) at 1.

[70] Ibid.

[71] Oneyebuchi T. Uwakah, *Due Process in Nigeria's Administrative Law System: History, Current Status, and Future,* (New York: University Press of America, INC. 1997) at 6.

> "decrees do not preclude the courts from enquiring into any inconsistency that may arise under the Constitution, rather it merely bars the courts from questioning the validity of the making of a decree or an edict on the ground that there is no valid legislative authority to make such."[75]

Therefore, the Court still maintains its judicial function of determining the inconsistency of any law with the provisions of the Constitution and has the power to declare such laws void.[76] This power is conferred upon the courts expressly from s.46 of the Constitution, which states that:

> "(1) Any person who alleges that any of the provisions of Chapter 4 (fundamental human rights) has been, is being or likely to be contravened in any state in relation to him may apply to a High Court in that State for redress."

This section further bestows an obligation on the National Assembly. It states that:

> (4) The National Assembly-...

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[72] Supra note 46 at 298.

[73] Supra note 71 at chapter 5.

[74] [1968] N.M.L.R 253.

[75] Ibid.

[76] Supra note 46 at 299.

(b) Shall make provisions-

  (i) For the rendering of financial assistance to any indigent citizen of Nigeria where his rights under this chapter (Fundamental Human Rights) have been infringed or with a view to enabling him engage the services of a legal practitioner to prosecute his claim, and

  (ii) For ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.

The Constitution has made substantial provision to protect the rights of those who assert that their fundamental human rights have been infringed. Since the application of this provision is far from reality, various human rights organisations provide litigants with legal aid.

d. Judicial Review

An individual who alleges a violation of rights can seek redress from the High Court, asking for the inherent jurisdiction of this Court over the matter, which could be in the form of an injunction to prevent further violation or seeking for remedies for the existing violation.[77] The process of judicial review involves questioning the constitutionality of a law enacted or an action carried out by any arm of government.[78] This power of judicial review is based upon the supremacy of the Constitution, which all other laws must conform to and in carrying out this function the distinct quality of the supremacy constitution is attained in practice.[79] Judicial review also essentially deals with the constitutionality of decisions and actions of inferior courts.[80] Judicial review can also mean "judicial remedy".[81] Judicial review can therefore be effected, in order to consider the "constitutionality of a law, or action or proceeding of an administrative body".[82] An application for judicial review, challenging the constitutionality of a statute, can be done "directly or by way of defence to an action, or by using the following grounds:

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[77] J. A. Sokefun, *Introduction to Constitutional Law in Nigeria,* (Ogun state (Nigeria): The Department of Public Law and Jurisprudence , Ogun State University Ago - Iwoye 1997) at 199.

[78] Ibid.

[79] Ibid.

> (i) "That the legislature that enacted it exceeded its powers.
>
> (ii) That it is contrary to and violates the fundamental human rights provisions guaranteed in the Constitution and it is therefore inconsistent with it.
>
> (iii) That the procedure in which it was passed was not prescribed by the Constitution.
>
> (iv) That it is otherwise contrary to the provisions of the Constitution."[83]

The Constitution gives validity to statutes enacted. Government bodies that enact these laws must exercise their powers as provided by the Constitution. Therefore the Constitution is the supreme law, to which all laws, and governing bodies must adhere, to have validity for such laws and actions.

There are various lines of Nigerian cases where the Courts have declared statues unconstitutional due to their non-conformity with the constitution.[84] A declaration, affirming the void ness of statutes is basically the means employed by the Courts in stating the statute's inconsistency with the constitution.[85] This remedy is usually granted against government or its privies as defendants.[86] The consequence of declaration is the void ness of the statute by virtue of S. 1 (3) of the 1999 Constitution. An injunction will only be sequel to this declaration, "if action has been, or is being threatened to be, taken under the statute in question".[87] In this case, a declaration will not be a suitable remedy to prevent the defendant from acting in a manner that infringes upon the rights of the plaintiff.

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[80] Supra note 37 at 412.

[81] Ibid.

[82] Supra note 46 at 302 -303.

[83] Ibid.

[84] *Oseyomon* v. *Ojo* (1993) NWLR (pt 299) 344, the court of appeal declared null and void S. 51 (1) (c) of the Cooperative Society Law cap. 45 Laws of Bendel State 1976, for its non-conformity with the 1979 Constitution. In *Oloriegbe* v. *Omotesho* (1993) 1 NWLR (pt 270) 386, the Supreme Court invalidated S. 63 (1) of the High Court Law of Northern Nigeria 1963 for non conformity with the 1979 Constitution. In *Imo State* v. *Greeco* (1955) 3 NWLR (pt 11) 71, the Court of Appeal

S. 127 (3), 130 (7) and 138 (2) of the Electoral Act (cap.105) LFN 1990 were declared null and void for being an unwarranted interference with judicial powers of the Court and with the right to fair hearing in the 1999 Constitution in *Ukpo* v. *Adede*.[88]

In *Balewa* v. *Doherty*[89], the Commissions and Tribunals for Enquiry Act 1961 was enacted by the Federal Parliament. This Act *inter alia* gave commissioners appointed under

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invalidated sections 3, 4 and 5 of the Petitions of Rights Law 1963 E. N. for it's inconsistency with the 1979 Constitution. In *Tony Momoh* v. *Senate of the National Assembly* (1981) 1 NCLR 21, H. C, it was held the provision of section 31 of the Legislative (Powers and Privileges) Act, Cap. 102 Laws of Federation of Nigeria and Lagos, 1958, was void and of no effect since it conflicted with section 1 of the 1979 Constitution. In *Peenok* v. *Hotel Presidential* (1983) 4 NCLR, it was held that Edicts Nos. 15 & 17 were void and of no effect and therefore unconstitutional due to its inconsistency with the clear and mandatory provisions of sections 31 of the 1963 Constitution. In *Bendel State* v. *The Federation* (1982) 3 NCLR 1, the Supreme Court declared the Allocation of Revenue (Federation Account) Act 1, 1981, null and void and of no effect since its passage did not conform with the procedure laid down by the Constitution. The court declared void the provisions of S. 3 (1) of Edict No. 1 1985 of Plateau State in the case of *Emerah & Sons* v. *A-G Plateau State* (1990) 4 NWLR (pt 147) 788 CA, due to its inconsistency with S.236 of the 1979 Constitution.

[85] Supra note 46 at 306.

[86] Ibid.

[87] Ibid. at 307.

[88] (2001) 10 NWLR (pt 674) 1 CA.

[89] [1963] 1 W.L.R 949.

it the power to hold a commission of inquiry into certain activities of, among other persons, the plaintiffs in relation to a bank licensed under the Banking Ordinance and doing business principally in the Western Region and the Federal Territory. The plaintiffs sought a declaration that the Commissions and Tribunals of Enquiry Act of 1961 under which the commission of inquiry was appointed was generally unconstitutional, or if not, certain sections thereof were unconstitutional. The Court held that the Act was invalid on the ground that the particular provisions exceeded the power of Parliament and the invalid provisions could not be severed from the valid provisions or read down, so as to comply with constitutional requirements. The Court also held that the Act was unconstitutional and an unlawful exercise of lawfully delegated power.

Similarly, in *Chief F.R.A. Williams* v. *Majekodunmi*[90], the defendant under S. 5 of the Emergency Powers Act 1961, under the Emergency Power (Restriction Orders) regulations of 1962, restricted the plaintiff's movement to a distance of 3 miles from a particular address in Abeokuta (the capital city of Ogun state). The plaintiff claimed that the Emergency Powers (Restriction Orders) Regulations 1962 was illegal and unconstitutional and void to the extent that it authorised the defendant to serve or have restriction orders served on the plaintiff. The defendant contended that the restriction was placed on the plaintiff in the interest of public order and safety (in the former Western Region) and that such a law was reasonably justifiable in a democratic society. According to the Constitution, the provisions that deal with freedom of expression shall not invalidate any law that is reasonably justifiable in a democratic society. The Court held that the restriction order was not reasonably justifiable in a democratic society and it was set aside. The Court referred to *The Queen* v. *The Amalgamated Press (of Nigeria) Ltd. and another*[91] where it was held in obiter that the words "reasonably justifiable in a democratic society" must be read in the context of the Constitution and more particularly its Chapter four which deals with fundamental human rights. According to the Court,

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[90] [1962] 1 All N.L.R 413.

> "these rights are essential and are to be maintained and preserved; and they are to serve as a norm of legislation under majority rule, which is the form of rule pervading the Constitution. If they are invaded at all, it must be only to the extent essential for the sake of some recognised public interest, and not further".[92]

Under these criteria, the Act was not reasonably justifiable in a democratic society. This obiter is similar to S.1 of the Canadian Charter of Rights and Freedoms:[93]

> "The Canadian Charter of Rights and Freedoms guarantee the rights and freedoms set out in it subject only to such reasonable limits prescribed by law as can be demonstrably justified in a free and democratic society."[94]

Under this provision, only laws that are reasonably justified in a free and democratic society can limit the Charter rights. The Supreme Court of Canada stated in *R* v. *Oakes*[95] that two central criteria must be satisfied to establish that a limit is reasonable and justified in a free and democratic society.

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[91] [1961] All N.L.R. 199.

[92] Ibid.

[93] Rights that are believed to be necessary in a free and democratic society are set out in the Canadian Charter of Rights and Freedoms. This Charter forms a part of the Canadian Constitution. The Canadian Constitution is also the supreme law of Canada and all other laws must be consistent with it. The Charter then derives its supremacy as being part of the constitution.

[94] Canadian Charter of Rights and Freedoms, S.1.

[95] [1986] 1 S.C.R. 103.

> "First, any measure to limit a charter right must serve an objective, which is sufficiently important to warrant overriding a constitutionally protected right or freedom. This objective must relate to societal concerns, which are pressing, and substantial in a free and democratic society before it can be characterized as important. Secondly, the party invoking S.1 must show that the limitation is reasonable and demonstrably justified."[96]

In *Unongo* v. *Aku*[97] the Nigerian Supreme Court declared the provisions of the Electoral Act 1982, unconstitutional due to their variance from the provisions of the 1979 Constitution.

The express provisions of the Constitution, as it is with any law will only have effective force, when various structure such as monitoring bodies are established to ensure that they are complied with.[98] In many jurisdictions today, laws exist in formal documents, while what really obtains in practice is an extreme disregard for these laws by both the government and the governed. This questions the authoritative force of the Constitution as the supreme law in Nigeria. Can we still count it as the basic norm? In *J.A Adewale and others* v. *Lateef Jakande of Lagos and others*[99] a breech of the fundamental human right against discrimination was alleged. The Court upheld the right of every citizen of Nigeria to freedom from discrimination on grounds of ethnic or communal belonging, sex, religion or political opinion as having been guaranteed by s.39 of the 1979 Constitution (s.42 of the 1999 Constitution). The Court further held to be unconstitutional the proposal of government, which tended to subject citizens in Lagos state to disabilities not imposed in other states. The various decisions by the courts still secure the supremacy of the Constitution and unwittingly declare it as the basic norm. The problem, however, is the lack of prosecution of cases brought by women that challenge the constitutionality of the discriminatory laws.

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[96] Ibid.

[97] (1983) S.C.N.L.R. 332.

[98] Supra note 37at 143.

[99] (1981) 1 N.C.L.R. 262.

The court has some limitations in carrying out judicial review.

(i). Limitations on Judicial Review

(i.i). ***Locus standi***: This ordinarily means a standing or a right to sue. It denotes a legal right to make an application for the violation of a right in a court of competent jurisdiction.[100] A litigant expressing the violation of a right by an administrative organ or a statute has to be directly affected by it, and whose normal activities could further be disrupted by it.[101] This further presumes that there are real and substantial issues that would arise from adjudicating the dispute between the parties.[102] In *Olawoyin* v. *Attorney General Northern Region*[103], the plaintiff sought a declaration that part (vii) of the Northern Region Children and Young person's Law 1958, was unconstitutional since it violated *inter alia* the fundamental human rights to freedom of expression entrenched din Chapter four of the 1999 Constitution. The Court held that the plaintiff had no interest in the case and was further not directly affect by the law.

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[100] Supra note 37 at 369.

[101] Supra note 46 at 309.

[102] Ibid.

[103] (1961) 1 All N.L.R. 269.

This limitation is particularly used to curb the floodgate of unwanted litigation between parties and also to reduce the opportunities of conflict between the Courts and the legislature.

(i.ii). **Presumption of Constitutionality**: According to the rule in the Nigerian Law of Evidence, the party who asserts the existence of a legal right has the burden of proving its existence or its violation. Also, under constitutional law of Nigeria, the party alleging must prove the unconstitutionality of a statute; otherwise the Court has a duty to presume it is constitutional.[104] This also safeguards against unnecessary conflicts between the judiciary and the legislature. However, in carrying out this presumption, the courts ensure that the rights of the people are protected.[105]

Administrative actions are also subject to judicial review. This ensures that public authorities act according to the provisions of the laws in force. These may be an "executive, legislative, judicial or quasi-judicial actions".[106]

e. Grounds upon which an Act of Public Authority may be Challenged:

(i) *Ultra Vires*: An act or omission of an administrative organ can be declared *ultra vires* under the following circumstances:

(a) "If it is contrary to some particular constitutional provision.
(b) If it goes beyond the limits of lawfully delegated power
(c) Where an error has been committed in the process of making the rule or regulation.

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[104] Supra note 46 at 311 - 312.

[105] Ibid.

[106] Ibid. at 315.

(d) That the rule or regulation is unreasonable, uncertain or made for an improper motive or purpose."[107]

(ii) **Quasi-Judicial powers and Natural Justice**: In the dispensation of justice public authorities with judicial or quasi-judicial powers must abide with the rules of natural justice which encompasses:

(a) ***Audi alteram partem***: The affirms the rules of fair hearing, which involves giving of notice within a reasonable the time stipulated by the rules of court and giving the parties an opportunity to be heard as guaranteed by the Constitution.

(b) ***Nemo judex in casua sua***: The court should be unbiased and impartial in the adjudication of disputes.[108]

Against this background, it is relevant to analyse critically for their constitutionality, the laws that discriminate against women in the context of the provisions of the Constitution.

Chapter four of the 1999 Constitution guarantees the fundamental human rights of all citizens of Nigeria. It guarantees for every Nigerian citizen basic and fundamental human rights, which includes the dignity of the human person, freedom from discrimination, and a fair trial. Such inalienable rights are conferred on every citizen of Nigeria, without gender distinction. In reality, the practical application of these provisions is far from what obtains on paper. The rights of women and girls are subject to continual infringement. From conception, gender discrimination is evident. Some ethnic groups in Nigeria believe that prolonged labour would result to the birth of a female child as she waste a lot of time gathering tools to serve the world, while that of a male child is brief, since he is in a hurry to come into the world to be served.[109] These myths, unfortunately encourage discrimination between both sexes. This discriminatory view is further reflected in "statutes, customs and common practices".[110] These do not legally justify these customary belief since most of them are inconsistent with the fundamental human rights of women as guaranteed by the Constitution. These rights have been entrenched into the Nigerian Constitution to prevent the executive from encroaching arbitrarily upon an individual's rights and liberties, and also to prevent the legislature, (subject to necessary exceptions) from making laws that encroach on an individual's rights.

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[107] B.O Iluyomade , B.U Eka, *Cases and Materials on Administrative Law in Nigeria*, 2nd ed. (Ile Ife (Nigeria): Obafemi Awolowo University Press Ltd.:1992) at 118.

[108] Supra note 46 at 318 - 319.

By 1980, an applicant that asserts an infringement of his fundamental human rights had to make an application under the Fundamental Rights (Enforcement Procedure) Rules 1979 in order to enforce these rights. Cultural stereotype however, hinders the majority of such cases from reaching the courts. A woman who has been assaulted by her husband has as her first point of contact the law enforcement agencies, which will either jeer at her or effectively trivialise her case as a domestic matter.

V. Enforcement of Fundamental Human Rights Under the 1999 Constitution of the Federal Republic of Nigeria

The Chief Justice of Nigeria has the power to make rules of procedure and practice for High Court to follow only in cases where the plaintiff alleges the violation of a right under

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[109] J. Effah, D. Mbachu, S. Onyegbula, *Unequal Rights: Discriminatory Laws and Practices Against Women in Nigeria*, (Lagos (Nigeria): Constitutional Rights Project,) at 2.

[110] Ibid. at 1- 2.

Chapter 4 of the Constitution, which deals with fundamental human rights.[111] This was done to vest on these courts original jurisdiction in such matters. This came into effect on January 1st, 1980.[112] Case law further emphasizes that this rules can only be used to enforce fundamental human rights under chapter 4 of the 1999 Constitution.[113] These rules provide for a complete code of procedure to be followed by the courts when such applications are in view. Under these rules a litigant can apply for redress where there has been an infringement of a fundamental human right, which amounts to a tort.[114] In *Shugaba Abdulrahaman Darman* v. *Minister of Internal Affairs and others*[115], the Court held that the procedure for an application over the infringement of the provisions of chapter 4 of the Constitution follows the Fundamental Rights (Enforcement Procedure) Rules 1979. It was also held that, in seeking redress for this infringement, any person could seek any form of redress under these rules including a declaratory order, injunction and damages.

An applicant must " first apply for leave without notice and support this application with his identity and the relief sought, and further verify these facts with an affidavit. This application must be brought before the court within 12 months of the event complained of. which it is sought."[116] Once the leave applied for is granted to the applicant, a return date within the period of 14 days from the date the leave was granted is given.[117] Under these rules, proceedings may be quashed, persons unjustly detained can be released and remedies may be ordered which included certiorari, habeas corpus, and injunctions.[118] Defendants who defy orders of the court can be punished under these rules.[119]

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[111] Supra note 34 at S. 46 (3) - The Chief Justice of Nigeria may make rules with respect tot he practice and procedure of a high court for the purposes of this section (infringement of fundamental human rights).

[112] Supra note 77 at 188.

[113] *Okechukwu* v. *Etukokwu* [1998] 8 N.W.L.R pt.562 at 518.

[114] Supra note 37 at 363 - 364.

[115] (1981) 2 N.C.L.R. 915 at 994.

[116] Order 1 rule 2 and 3 Fundamental Rights (Enforcement Procedure) Rules 1979.

VI. The Right to Freedom From Discrimination

> "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-
>
> ii. Be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or
>
> iii. Be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religious or political opinions."[120]

Discriminatory treatment can be defined as "affording treatment to different persons that is attributable wholly or in part to their respective descriptions by race, tribe, place of origin, political opinion and sex."[121] This usually involves specifying different criteria's in dealing with people, which would not be a basis for treating others within that same group. This section alone guarantees the equality of all persons in Nigeria. Specifically, it guarantees to men and women "equal treatment, equal privileges, equal disabilities and equal restrictions, legally or socially."[122] Therefore, any law, executive or administrative action, which seeks to deviate from the explicit provisions of this law, should be held inconsistent within the spirit and letter of the 1999 Constitution and, thus, be regarded as null and void to the extent of its inconsistency. It is left to the court of law to determine the violation of the intrinsic rights of women. Prior to the 1979 Constitution, sex was not included as a ground for discrimination, and women were denied certain basic rights. Its inclusion in the Constitution has yet to attain practical significance. The objective achieved so far is the recognition of sex as a basis of discrimination.

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[117] Ibid at Order 2 rule 2.

[118] Ibid. at Orders 3, 4 and 6.

[119] Ibid. at Order 6 Rule 1(2).

[120] Supra note 41 at S. 42 (1).

[121] Supra note 53 at 39.

A battered woman also faces discrimination from executive and administrative actions S.42 expressly prohibits this:

> "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-
>
> ii. Be subjected either expressly by, or **in the practical application of, any law in force in Nigeria or any executive or administrative action of the government**..."(emphasis added)

This discrimination appears especially among the law enforcement agencies, which apparently is their first point of contact for a battered woman outside her home. This unfortunately accounts for the undesirability to report cases of spousal battery. The police in

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[122] Ibid.

Nigeria do not take cases of spousal battery seriously. Cultural values and Legislative inhibitions are often cited by the police for their lack of diligent prosecution of spousal abuse cases.[123] They further tag it as an interference into domestic issues and an invasion of privacy. This police attitude further encourages the perpetrators to assume they can get away with these crimes.[124] In an unreported case, on December 14, 2000, Chief Ani murdered his wife Patricia, for paying a condolence visit to a relative.[125] Prior to this incident she and her seven children remained prisoners in their house and could not attempt to leave when he was around. On the fateful day when he learnt she left the house he promised to kill her. He carried out this threat by throwing her down from the first floor and started to beat her. Azuka sustained life-threatening injuries. He then put her in the car booth and took her to the hospital where she died. Despite eyewitness accounts, an arrest was not made immediately, until the highest authorities were notified. This is one of the numerous cases that reached the police and are not given adequate priority. All these are contrary to the basic rights granted and guaranteed by the Constitution.

In the United States, a landmark case in Connecticut set a precedent in cases where the police failed in their duty to protect victims of domestic violence. In *Thurman* v. *Torrington,*[126] Tracy Thurman had been experiencing series of severe abuse from her husband, which the police department chose to ignore. During one of these attacks she became a quadriplegic. The officers had a discriminatory based policy of non-intervention in domestic violence cases, which discriminated against women as a class. She successfully sued the City of Torrington, and officers of its police department and was awarded $2.3 million. The court held that "Torrington police failure to respond amounted to an "intentional" discrimination against women".[127] In furtherance to this, Connecticut passed a mandatory arrest policy.

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[123] S. Aghedo, "Address" (Breaking the Silence : Report of a One - Day National Workshop on "Reporting Domestic Violence as Crime in Nigeria" Excellence Hotel Ogba Ikeja Lagos Nigeria, 14 July 1999) Lagos, Nigeria: Project Alert on Violence Against Women: 1999 at 10.

[124] Ibid at 26.

[125] " Housewife Murdered by Husband" *Violence Watch* 3:1 January - March 2001at 8.

[126] 595 F.Supp. 1521 (D. Conn. 1984).

In *Reed* v. *Reed*,[128] for the first time, the Supreme Court of the United States declared that sex discrimination violates the equal protection clause of the 14th Amendment. The arbitrary preference Idaho gave to fathers over mothers in the administration of their children's estate could not stand in the face of the 14th Amendment. The Court held to be "violative of the equal protection clause a provision of the Idaho probate code, which provided that in determining the administration of estates among persons in the same class "males must be preferred to females".[129] For the first time, the Supreme Court of the United States declared a state law unconstitutional. Then came *Frontiero* v. *Richardson*.[130] A federal law permitted a serviceman to claim his wife as his dependent but allowed the wife such a benefit only if the husband was dependent on her for over half of this support. Justice Brennan presiding over this case stated that:

> "There can be no doubt that our Nation has had a long and unfortunate history of sex discrimination. Traditionally, such discrimination was

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[127] Ibid.

[128] 404 U.S 71 (1971).

[129] Ibid.

[130] 411 US 677 (1973).

> rationalised by an attitude of romantic paternalism which, in practical effect, put women not on a pedestal, but in a cage."[131]

Courts in America have upheld the supremacy of the Constitution, by declaring various statues unconstitutional and void due to their conflict with the equal protection clause in the 14th Amendment.[132] A law is said to violate the equal protection clause, where it discriminates on the basis of gender unless an "exceedingly persuasive justification" an can justify this classification.[133] This is akin to the provision in S.1 of the Canadian Charter of Rights and Freedoms where other laws may limit Charter rights provided they are reasonably justified in a free and democratic society. Under American law, the person justifying this classification, must demonstrate that:

> (i) "The classification serves "important governmental objectives" that do not rely on archaic or overboard generalisations about the different talents, capacities or preferences of males and females.
>
> (ii) The objectives are genuine in that they describe actual state purposes, not rationalisations for actions in fact differently grounded,
>
> (iii) The discriminatory means employed are substantially related to the achievement of these objectives."[134]

In the pursuit for equal protection, feminist advocates in America, are calling for a constitutional amendment, the Equal Rights Amendment (ERA).[135] It states that "equality of rights under the law shall not be denied or abridged by the United States or by any other State on account of sex."[136] However, the requisite 38 state needed to ratify this was not attained.

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[131] Ibid. at 684.

[132] Stanton v. Stanton 412 U.S 1975, Craig v. Craig 429 U.S. 190, 1976- where the court declared unconstitutional, an oklahoma statute that prohibited the sale of 3.2% beer to males under 21 years and to females under 18 years. This statue was held to invidiously discriminate against 18 to 20 year old males. Weinberger v. Weisenfeld 420 U.S. 636, 1975.

[133] United States v. Virginia 518 U.S 515, 531-534 (1996).

[134] Ibid.

The United States has also acknowledged the presence of sexual discrimination in society, patterned after cultural stereotype of a patriarchal society, and, as a liberal democratic society, it is taking steps to extinguish discrimination on the basis of gender.

Under Canadian constitutional law, the Canadian Charter of Rights and Freedom guarantees "equality before and under the law, equal protection and benefit of the law, without discrimination based on race, national ethnic origin, colour, religion, sex, age, mental or physical disability."[137] The Charter further provides for equality by stating that:

> "Notwithstanding anything in this Charter, the rights and freedoms referred to in it are guaranteed equally to male and female persons."[138]

Canadian women advocated for the entrenchment of sex equality rights currently seen in the Charter. [139] Various decisions by the courts have challenged the constitutionality of various statutes due to their violation of sexual equality as guaranteed by the Charter.

In *R* v. *Drybones*[140] the Supreme Court of Canada held that the "provision in the

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[135] L.J. Barker, T. W. Barker Jr., *Civil liberties and Constitution: Cases and Commentaries* 5th edition (New Jersey: Prentice-Hall, 1986) at 520.

[136] Ibid.

[137] Supra 94 at S.15.

[138] Ibid. at S.28 .

[139] Dr. S. L. Martin, "*Some Constitutional Considerations on Sexual Violence Against Women*" (1994) 32 Alta. L. Rev. (No.3) 535.

[140] [1970] S.C.R. 282.

Federal Indian Act which made it an offence for Indians to be intoxicated off a reserve contravened the equality before the law clause and was, therefore, inoperative."[141]

In *D.S.W* v. *R.H*[142], the equality right of the applicant under s. 15 of the Charter was violated by s. 9 of the Children of Unmarried Parents Act, by its imposition of "a time limit of one year from a child's birth on single mothers who were attempting to initiate filiation proceedings against the putative father."[143] This restriction was not given to married women or fathers. The court held that this section discriminated against a group of people, which did not apply equally to other members of the same group and thus violated their rights under S. 15 of the Charter.[144]

In *Murley* v. *Hudye*[145], S. 19 (1) of the Maintenance and Recovery Act expressly violated the applicants right against discrimination on the basis of gender as guaranteed under S.15 of the Canadian Charter of Rights and Freedoms, by requiring corroborative evidence of paternity in order for an award of child maintenance to be available. The court held S.19 (1) to be void, as it discriminated on the basis of gender, since only single women were subject to this requirement as against married persons or single men.[146]

Also in *Service Employees International Union, Local 204* v. *Ontario (Attorney*

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[141] Ibid.

[142] (1988) 65 Sask R. 207.

[143] Ibid.

[144] Ibid.

[145] [1994] A.J. 1055.

[146] Ibid

General),[147] the applicants argued that schedule J of the Savings and Restructuring Act violated the Charter and was, thus, unconstitutional and of no force and effect. Furthermore, it was found to be in conflict with the remedial objective of the Act, for singling out one group for differential treatment and denying it equal protection and equal benefit of the law. The court held that due to Schedule J, "the Act discriminated against proxy sector women by denying them the opportunity of quantifying and correcting systemic gender-based wage inequity and the discrimination was not justified under s.1 of the Charter, as the stated objective of Schedule J did not warrant overriding the constitutional right to equal benefit of the law."[148]

In Nigeria, the cultural environment has excused a disregard for the Constitution or, rather, a selective observance of its provisions. Laws are disregarded especially those that guarantee human rights. Laws can only have effective enforcement and gain the respect of the governed, if applied and, most especially, seen to be practised in order to achieve effective justice. When these laws are seen to be effectively applied by the agents of justice, individuals especially women will be encouraged to come out and advocate for their rights. The Constitution remains the basic norm on paper but in practice it is like other law, that follow the dictates of the nations leaders.

VII. The Criminal Code and Sharia Penal Code

The Criminal Code and the Sharia Penal Code are both federal statutes applying to the

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[147] [1997] O.J. No. 3563.

[148] Ibid

Southern and Northern states, respectively, and they both deal with criminal law. [149] Punishments for specific offences under both statutes differ. For example, under the Criminal Code "any person who steals anything capable of being stolen is guilty of a felony and is liable, if no other punishment is provided, to imprisonment for three years."[150] Under the Sharia Penal Code, the punishment for theft is "amputation of the right hand from the joint of the wrist; if the offender is convicted of second theft shall be punished with the amputation of the left foot; and the offender if convicted of the third theft shall be punished with the amputation of the left hand from the joint of the wrist; the offender convicted of a forth theft shall be punished with amputation of the right foot; and the offender convicted of a fifth or subsequent thefts, shall be imprisoned for a term not exceeding one year."[151] The Sharia Penal Code applies to only Moslems.

a. The Criminal Code

Observed above, the Criminal Code does not have any specific provision that criminalizes assaults within the family or emerging from an intimate relationship. The Criminal Code generally punishes offences of violence, either directed at women or men, which include assaults, grievous harm, wounding, manslaughter and murder. These are basically offences that a battered woman can utilise against her batterer, but how adequate are these laws in prosecuting batterers?

To a large extent, the criminal statute does not regard as relevant the circumstances of domestic relationship in defining the specific offences. A look at these specific provisions and reference to the Canadian case law helps formulate suggestions as to what the courts may consider in punishing the offence of spousal battering. Under the Nigerian Criminal Code assault is defined as:

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[149] C. Okonkwo, M. Naish, *Criminal Law in Nigeria*, (Great Britain: Sweet and Maxwell, 1964) at 3 - 13.

[150] S. 390 Criminal Code Act 1990 Volume 5 Laws of the Federation of Nigeria Chapter 77.

[151] S. 145 Sharia Penal code 1990 Volume (1XX) Laws of the Federation of Nigeria Chapter 345.

> "A person who strikes, touches, or moves, or otherwise applies force of any kind to, the person of another, either directly or indirectly, without his consent, or with his consent, if the consent is obtained by fraud, or who by any bodily act or gesture attempts or threatens to apply force of any kind to the person of another without his consent, in such circumstances that the person making the attempts or threat has actually or apparently a present ability to effect his purpose, is said to assault that other person, and the act is called an assault."[152]

As stated above, this section does not recognise the intimacy of relationships for punishment of assault by husbands on their wives. In cases of assaults between spouses, various factors have to be considered in dealing with the parties, such as the danger to the victim upon return to the batterer if allowed on bail or, where the perpetrator is released, the hardship the victim faces upon conviction of her husband; and the nature or objective of the sentence passed on the perpetrator. All these have to be considered due to the peculiar relationship between the parties.

Canadian courts make no distinction between assaults by married or cohabiting couples and strangers. In *R* v. *Brown,*[153] McDonald J. stated that the problem of wife battery cannot only be solved by punishing the batterer. He stated that the in adjudicating a case of spousal abuse, the court can use this opportunity to show its disapproval of this crime, through its sentencing policy not only to the particular perpetrator but also to future perpetrators.[154] He further elaborated on the sentencing policy to be adopted by the courts. The court first identified what the suitable sentence will be for a man who assaults a stranger with whom he has no relationship.[155] The court then goes on to examine the circumstances peculiar to the case. He identified the husband's breech of the trust placed in him by his wife and identified this, as an aggravating factor, in such cases.[156] Women find themselves in vulnerable situations due to the financial and emotional attachment to their batterer which make it difficult to leave such abusive relationships. He further stated that the sentencing policy adopted by the court should help deter further abusive actions from the perpetrator. However, the more important principles are "general deterrence" to deter other men from similarly conducting themselves toward women who are their wives or partners, and also the "denunciation principle" namely, that the sentence should express the wish to repudiate such conduct in a society that values the dignity of the individual."[157] He further stated that the court must consider:

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[152] *Criminal Code Act* Volume 5 Laws of the Federation of Nigeria 1990 Chapter 77 S. 252.

[153] (1992) 125 A.R 150.

> " whether the assault for which the man has been convicted is relatively minor in nature, or is an isolated incident, or whether there are other circumstances which make it desirable that the sentence not be such as to be counterproductive to the possibility that the family relationship will be preserved (if there is any such possibility remaining)."[158]

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[154] Ibid.

[155] Ibid.

[156] Ibid.

[157] Ibid.

[158] Ibid.

The first two of these points would already have been taken into account in deciding what the starting-point should be; that is, what the fit sentence would have been if the assault had been between strangers. The third circumstance, the court stated, must be applied in such a way that the wife would not be a disadvantaged position in which pleading for her husband would affect the objective of general deterrence which the sentencing policy seeks, even at the cost of ending such a relationship.[159] This is all done in order to prevent emotional blackmail by the husband, who can use his position to threaten his wife and more so can and in most cases does repeat the offence.

In short, even though Canadian criminal law does not have a specific provision criminalizing spousal battery cases, the law has taken into consideration the peculiar circumstances surrounding this relationship in sentencing the offenders.

Africa as a whole suffers from cultural abuse of women. Many African countries are now realising that domestic violence is one of the leading sources of crime and that the victims usually suffer in silence. Some African countries have started drafting domestic violence legislation since the general offences in the various Criminal Codes have not helped the situation, and those who are supposed to be protecting these women do not take their matter seriously. Having substantial legislation against this violence will make the society realise that it is indeed a breech of the fundamental human rights, and that women are entitled to be protected.

In Zimbabwe, "criminal action for assault; a binding over order requiring the man to refrain from assaulting her, with criminal penalties for breech of observance; judicial separation; divorce; and civil damages" are some of the remedies a female victim of domestic violence can claim.[160] Battered women in Zimbabwe basically rely on the punishment against assault. Similar to the Nigerian situation, Zimbabwe also records a rise in cases of domestic violence, thereby creating the need to enact legislation against domestic violence. An organisation for women therefore drafted a domestic violence bill to this effect.[161] This has yet to be presented to parliament.

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[159] Ibid.

Similarly, Kenya, in 1996, set up the Commission on the Law of Marriage and Divorce. This Commission had the responsibility of addressing the degenerating rights of women and concluded that wife beating ranked at the top.[162] A recommendation to out law this crime by the commission was opposed to by male members of the parliament and as it obtains in Nigeria, they considered it as a private affair that dominates the traditional societies.[163] As a result, assault is used as a mode of seeking redress. However, the rise in the rate domestic violence became an issue of great national concern. The media revealed that "three of every five women in Nairobi reported being assaulted at home."[164] Thus the Nation continued to suffer from an increase in the rate of violence arising from domestic violence cases, which had a significant effect on community's expenditure on health matters due to injuries sustained from the violence.[165] There was then an urgent need to enact a law against domestic violence. Thus, a domestic violence bill was proposed. This bill, which is yet to be passed into law, combines retribution and deterrence in an attempt to end violence. It includes both men and women as offenders, who if found guilty will be liable to one year imprisonment, a fine of Sh100, 000 or both.[166] The Kenyan government has shown a willingness to end domestic violence by acknowledging it as a crime requiring punitive sanctions.

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[160] J.Stewart, W.Ncube, M. Maboreke et al., *The Legal Situation of Women in Southern Africa*, (Zimbabwe: University of Zimbabwe Publications) at 214.

[161] On-line: <http://www.unifem.undp.org/curr1200.htm> (date accessed: 23 November 2001).

[162] Betty Wamalwa, "Violence against wives in Kenya" in M. Adhiambo Mbeo, O. Coko-Ombaka, eds., *Women and Law in Kenya* at 75.

[163] Ibid.

[164] Daily Nation Newspaper Kenya Friday November 3rd 2000 http://www.nationaudio.com/News/Daily Nation/03112000/comment/Editorial1.html.

Namibia has also taken a giant leap towards eliminating domestic violence. This bill does propose to criminalize the specific offence of domestic violence, but certain offences are recognised as domestic violence, involving people in intimate relationships.[167] The draft bill broadened the definition of domestic violence to include "sexual, economical, verbal and psychological abuse, intimidation and harassment, and defines domestic relationships to include relationships other than the normal marriage relationship."[168] A peculiar feature of this bill is its gender neutrality, thereby extending protection to both sexes. It recognises the urgent need for victims to be protected from batterers, and therefore grants interim protection orders and powers of arrest without warrant.[169]

The Republic of South Africa has gone further, by enacting the Domestic Violence

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[165] Ibid.

[166] Ibid.

[167] "Draft Bill on Domestic Violence Submitted" Online: <http://www/grnnet.gov.na/News/Archive/2001/feb2001/draft_bill.htm>(date assessed: 26 September 2001)

[168] Ibid.

[169] Ibid.

Act, 1998. This bill recognises that domestic violence is a serious crime against the society and that women form the majority of victims. It also emphasizes via its provisions that domestic violence is an obstacle to the attainment of gender equality. Unlike other bills proposed by various African countries, this Act is very flexible and accommodates notions that seem contrary to African culture. A victim under this Act includes any party in a "domestic relationship."[170] This includes "married and cohabiting couples, same sex relationships, family members, dating or customary relationships, and shared household members."[171] For this Act, domestic violence includes "emotional, verbal, sexual, psychological, and economic abuse and also encompasses harassment, stalking, and damage to property."[172] This Act offers victims civil protection in the form of protection orders.[173]The statute acknowledges the African notion of privacy within the family circle and thus, makes provision for proceedings in camera.[174] This section guards the culture Africans attached to private family matters. This section will also encourage victims to report and seek to prosecute the abuse. In recognising the fact that domestic violence is a serious crime against society, offences under this Act attract imprisonment not exceeding five years, a fine or both. The peculiar feature of this statue is its flexibility, but, at the same time, flexibility is not sacrificed for the African culture of privacy.

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[170] Domestic violence Act 1998 of the Republic of South Africa S.1 (vi).

[171] Ibid.

[172] Ibid. at S.1 (vii).

[173] Ibid. at S. 5.

[174] Ibid at S. 16.

We can applaud these countries for working to stop violence against women, but such steps in themselves will not deter domestic violence. The laws can exist on paper but in practice may be ridiculed or ignored. The whole system has to be restructured, the law enforcement, the judiciary and, most importantly, the victims need to be educated on the rights at issue. Case law in which courts actually put the various provisions into practice will also help in winning the confidence of the victims for the legal system.

Nigeria can start by prosecuting cases of domestic assaults more seriously. The provisions in the Constitution and various international instruments against violence will be sufficient. Courts can take into account the relationship between the parties in prosecuting the cases. Legislation against domestic violence will be aggressively opposed in Nigeria even before it gets to the legislative houses. Men will see it as an attempt by women to acquire power. Power is jealously guarded as a preserve for men. Specific legislation against domestic violence can, in the future, take the place of the existing discriminatory laws that condone domestic violence and help in creating an awareness in society that it is an offence to batter a woman. These laws will be examined below in this chapter.

(i). Indecent Assault

The Criminal Code also has laws that discriminate by gender. Although this statute tries to make offences gender neutral, it still suffers gender discrimination. Assaults on women have continued unabated due to the mildness of the punishment given to convicted persons. The discrimination suffered in these laws is self evident in the definition and punishment for indecent assault for males and females. It states:

> "any person who unlawfully and indecently assaults any male person is guilty of a felony, and is liable to imprisonment for three years."[175]

In contrast,

> "any person who unlawfully and indecently assaults a woman or girl is guilty of a misdemeanour and is liable to imprisonment for two years."[176]

A felony under Nigerian law is

> "any offence which is declared by law to be a felony, or is punishable without proof of previous conviction with death or with imprisonment for three years or more."[177]

A misdemeanour is

> "Any offence, which is declared by law to be a misdemeanour, or is punishable by imprisonment for not less than six months, but less than three years."[178]

The Criminal Code does not define indecent assault, but its definition of indecent, has a sexual connotation. These sections reveal that, where the victim of an indecent assault is a man, the law imposes a penalty of not more than 3 years, whereas; where the victim is a woman, the law imposes a lesser punishment of 2 years. In essence, the punishment for indecent assault states that the offence is of less impact and gravity when committed against women. Under the basic principle of criminal law, "all persons should be equally protected from harm of like degree."[179] The sexist disparity is glaring. If both sexes can be indecently assaulted, why then should the punishment differ? From the ~~statistics~~ observed in Chapter One it is evident that women are assaulted more than men. One will expect that the law will seek to give adequate protection to those more likely to be affected by a specific crime. These sections obviously discriminate on the basis of sex and, thus, against the constitutional right of an individual to freedom from discrimination on this ground.[180]

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[175] *Criminal Code Act* Volume 5 Laws of the Federation of Nigeria 1990 Chapter 77 S. 353.

[176] Ibid. at S. 360.

[177] R. Y. Hedges, *Introduction to the Criminal Law of Nigeria*, (Great Britain: Sweet and Maxwell, 1962) at 26.

[178] Ibid.

Furthermore, in the practical application of the Criminal Code provision that punishes indecent assault, women have been expressly subjected to discrimination on the ground of their gender, which has not been accorded to men for the same offence. If offences are to be defined as applying to both sexes, then adequate protection should be given to both genders in order to deter offenders.

b. The Sharia Penal Code

Prior to October 27th, 1999 when Zamfara State in Northern Nigeria, became the first State to adopt the Sharia Legal system, the Penal Code was basically a set of federal legislation that applied to Northern states in Nigeria. The Zamfara State House of Assembly enacted an Act to establish a new Sharia Court to administer Islamic law in the state.

The Constitution provides for the establishment of a Sharia Court of Appeal for any state that requires it, but limits its jurisdiction to Islamic personal law and to any additional jurisdiction conferred by the state.[181] The constitutionality of Sharia penal law is being questioned. Sharia family law stress male guardianship over women. Consequently, what obtains are features of inequality between men and women in the family. This research seeks to consider the constitutionality of the effects of Sharia law on women's rights. The adoption of Sharia law itself has added to the violation of women's rights in Northern Nigeria.

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[179] Supra note 109 at 16.

[180] S. 42 of the 1999 Constitution states "A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person-

(ii) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject".

Prior to the adoption of Sharia law as a governing state law, provisions in the Penal Code condoned spousal battering and discrimination against women. The constitutionality of these laws will be examined as regards the 1999 Constitution. Ultimately, the unconstitutionality of the adoption of Sharia law as the governing law of a state will be unmasked.

Nigeria is a secular state. The federal and the state governments cannot carry out any action that jeopardises this feature.[182] The Constitution expressly forbids the "adoption of a state religion by the government of either the federation or any state."[183] To counter this provision, the states that have adopted Sharia law often cite the provision of the Constitution which allows "State Houses of Assembly to make laws for the peace, order and good government of the state."[184] It has been further argued that the adoption of Sharia law does not amount to a state religion since it basically entails the Islamic Legal Code.[185] In Islam,

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[181] Supra note 41 at S.262 (1) & 277(1).

[182] Constitutional Rights Project (CRP), *The Place of Women Under Sharia* (Lagos: Constitutional Rights Project, 2000) at 4.

[183] Supra note 41 at S. 10.

[184] Ibid. at S.7 (4).

[185] Supra note 182 at 5.

Muslims follow the tenets of Islam, which basically forms the backbone of Islamic Legal Code. It is argued that the use of the Code is an indication that Islam is a religion that applies to its followers. Nonetheless, given the diverse religions in these states, the adoption of Sharia law affects other religions and regulates non-Muslim lives, as evidenced by the recent conflicts in Northern Nigeria. The adoption of Sharia law has further given certain Muslim activists authority to attack non-Muslims in the act of enforcing this law. An Islamic group known as *Hizbah* violated a Christian trader's fundamental human right by canning him 80 times after he was found with alcohol.[186] The adoption of Sharia law has also resulted to ethnic conflicts in different parts of Nigeria. Over 2,000 people have been killed in Kaduna (North), Aba (South-Eastern), and Jos (central) as a result of religious conflict.[187] Pro - Sharia activists have also attempted to connect the adoption of Sharia law to the freedom of religion as guaranteed by the Constitution which states

> "Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance."[188]

The carefully worded provisions of this section expressly state that it applies to individuals and not states. This section can be used against Sharia activists who rather than abiding by this provision violate other peoples rights to freedom of religion.[189]

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[186] M. Muindi, *African News* " Sharia: The Damocles Sword Hanging Over Nigeria" Online: < http://www.peacelink.it/afrinews/67_issue/p1.html> (date accessed: 13 November 2002).

[187] Ibid.

[188] Supra note 41 at S.38 (1).

Women are increasingly becoming the victims of Sharia law. The whole world witnessed the case of Bariya Ibrahim Magazu. In September 2002, this pregnant 17-year-old teenager was convicted of *Zina* (fornication), and *qadhf* (false accusation of fornication).[190] The former crime according to Sharia law earned her 100 lashes while the latter was found against her, due to insufficient evidence to prosecute the three men that forced her into sexual intercourse with them; for this she was given additional 80 lashes.[191] These punishments were executed 40 days after her delivery.[192] Under Sharia penal code, *Zina* is defined:

> "Whoever being a man or a woman fully responsible, has sexual intercourse through the genital's of a person over whom he has no sexual rights and in the circumstances in which no doubt exists as to the illegality of the act, is guilty of *Zina*.."[193]

Both offenders under this section are criminally responsible for their actions when found guilty. The nature of the crime involves the active participation of both parties. It will, therefore, be unjust to punish one party and acquit the other. In practice, however, the men are often discharged for lack of evidence and the women are left to face the punishment. This practice is obviously discriminatory against women.

The Sharia Court had the option to consider other means of prosecuting Bariya as a juvenile offender. The issue of criminal responsibility for a juvenile offender was not addressed during the proceedings. Under the Sharia Penal Code a special provision exist for punishing juvenile offenders:

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[189] Supra note 182.

[190] "Sharia and Women's Rights" *Violence Watch* 2:4 (October-December 2000) 1 at 4.

[191] Ibid.

[192] Ibid.

[193] Supra note 151at S.126.

> "When an accused person who has completed his seventeenth but not completed his eighteenth year of age is convicted by a court of any offence, the court may instead of passing the sentence prescribed under this code, subject the accused to:-
> (a) Confinement in a reformatory home for a period not exceeding one year; or
> (b) Twenty strokes of cane, or with fine or with both."[194]

This section was not considered. The issue of paternity was not discussed. Rather, the other parties accused of this act were discharged and acquitted. This was executed pending her application for leave to appeal as a Nigerian citizen and also under Sharia law.[195] One of the rules for a conviction in *hadd* offences, states that "there should be no shadow of doubt before convictions are confirmed"since they have fixed punishments."[196] There are seven *hadd* offences: "sedition, robbery with violence, apostasy, drunkenness, *zina*, falsely accusing someone of *zina*, and theft".[197] Her innocence was not supposed to be in dispute, since the Zamfara Penal Code requires for a finding of *Zina,* that there be "no doubt as to the consent and circumstances of illegality of the act of intercourse" between the parties accused."[198] Sexual intercourse was evidenced by her pregnancy. This however does not indicate consent or willingness to participate in the act of sex. This law also expressly states that :

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[194] Ibid. at S. 95.

[195] "BAOBAB for Women's Human Rights Condemns the Whipping of Bariya Maguzu" Nigeria News January 2001 (online: http://www.web.net/~iccaf/humanrights/nigeriainfo/jan01newsnigeria.htm (date assessed 22 January 2002).

[196] Ibid.

[197] Dr. M Haroon, "Islam and Punishment" Online: <http://www.iqra.net/articles/punishment.html> (date accessed: 19 October 2002)

[198] Supra note 151at S.126.

> "A consent is not such a consent as is intended by any section of this Shari'ah Penal Code, if the consent is given... by a person who is under eighteen years of age or has not attained puberty."[199]

It defines this as invalid consent, and sexual intercourse without consent is rape.[200] She further raises the issue of coercion, which obviously casts doubt as to her consent to the act.[201] However, Muslim law requires four witnesses to the act and willing consent, this was obviously neglected, one also wonders how possible it is to get four witnesses to such a private act. This makes it almost impossible for women to advocate their innocence. The operation of the rule of law was totally disregarded Hence, the victim became the accused, in a political trial that violated the rights of a teenage mother.

Every individual is "entitled to respect for the dignity of his person and shall not be subjected to torture or inhuman or degrading treatment..."[202] Case law has stated that corporal punishment on adults is degrading.[203] Laws that condone this act are *ultra vires* the constitution. In the case of *Alhaja Abibatu Mogaji and others* v. *Board of Customs and Excise and another*[204] it was held that the action by customs men aided by police officers and soldiers using all sorts of weapons, to beat market women in order to seize and detain their goods, violated their rights under the Nigerian Constitution to protection against inhuman and degrading treatment. These are adults; it hardly needs to be said that the act carried out on Bariya Magazu a teenager was a gross violation of her fundamental human rights. Also in *Uzoukwu* v. *Ezeonu II*,[205] the court defined torture as including "brutalisation and inhuman treatment which includes any act without feeling for the suffering of the other".[206] Niki Tobi J.C.A stated, *inter alia*, that "degrading treatment lowers the status, value or position of a person."[207]

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[199] Ibid. at S. 38.

[200] S.128. Defines rape

(1) A man is said to commit rape who, save in the case referred in subsection (b), has sexual intercourse with a woman in any of the following, circumstances:-

(i) against her will.

(ii) without her consent.

(iii) with her consent, when her consent has been obtained by putting her in fear of death or of hurt.

(iv) with her consent, when the man knows that he is not her husband and that her consent is given because she believes that he is another man to whom she is or believes herself to be lawfully married.

[201] Supra note 195.

[202] Supra note 41 at S.34 (1) (a).

The Zamfara penal code has failed to protect the poor due to lack of diligent prosecution of this case and violation of Bariya Magazu's right to a fair trial. Women in this state who are victims of rape, who suffer in silence also run the risk of being subjected to charges of *Zina*. This clearly violates women's right to justice and security, while protecting men who violate women's rights.

Another recent victim of Sharia law is Safiya Hussaini Tungar Tudu. The Sokoto

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[203] Supra note 37 at 147.

[204] (1982) 2 N. C. L. R. 552.

[205] (1991) 6 NWRL Part 250 at page 98.

[206] Ibid.

[207] Ibid.

Sharia court sentenced her to death by stoning after finding her guilty of having premarital sex. Shawn R. Jefferson of the New York Human Rights Watch condemned this sentence stating that

> "when a woman is punished so severely for having pre-marital sex, her right to make free decisions regarding her body is violated."[208]

Safiya became pregnant while the same court set free the man she committed this act with, after concluding that it lacked sufficient evidence to prosecute him for adultery. A Sharia court in Nigeria has recently upheld Safiya's appeal against the death sentence earlier passed on her, and she has been acquitted. In the ruling, Judge Mohammed Tambari- Uthman held that "the alleged act of adultery had taken place before adultery became a criminal offence under Islamic law and, as a result, the case should be dismissed."[209] He further stated that the court of first instance did not follow the appropriate procedure.

The theme of sexual discrimination in this case has still not been addressed. What this ruling means in effect is that, other women can still face this dilemma since Sharia law still operates. While Safiya celebrates her victory, another woman is facing this same ordeal. Ms. Amina Lawal has recently been found guilty of adultery. Charges against the man she revealed as the father of her child were dropped for lack of evidence. She faces the risk of being stoned. Her case is currently on appeal. This discrimination against women will end only if and when a judicial pronouncement is made declaring Sharia law unconstitutional, and an injunction is issued against Northern states that have adopted it.

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[208] L. Usigbe, "Sharia Court Sentences Woman to Death " Vanguard Newspaper Nigeria (15 November 2001) online: <http://www.vanguardngr.com/news/articles/2001/October/25102001/n1251001.htm> (date accessed: 26 March 2002).

[209] On-line: BBC news <http://odili.net/news/source/2002/mar/25/1.html> (date accessed: 25 March 2002).

In these events, the unfortunate victims are mostly women, It unjustly discriminates against women and infringes upon their fundamental human rights. After the adoption of Sharia law in Zamfara state, the Chairman of the Talata-Mafara local government area in the State gave "an ultimatum to spinsters and divorcees in this area to either get married in three months or get fired"![210] This is akin to the law that was issued in 1915, by British colonial officers in an attempt to restrict the number of free women in the Nigerian city of Katsina, proposing that those within the city be given seven days to get married. Now, to safeguard against adultery and fornication, women cannot participate in sports, segregation exists between males and females in schools and commercial vehicles.[211] This violates the Constitutional rights of these women to freedom of movement and the right not to be discriminated against on the ground of sex. On women in politics and in leadership positions, the special assistant to Kano State Governor on Political Affairs, Dr. Hafeez Abubakar, stated "that women mix emotions with public affairs" and that the positions best suitable for women are the teaching and nursing professions"![212] This best describes the second class citizenship and the unequal status ascribed to women. Under the 1999 Constitution, any law that is inconsistent with the Constitution is void to the extent of its in consistency. Sharia law expressly, and in its application, violates the rights of women to freedom of movement, right to the dignity of the human person and discrimination on the grounds of sex. Thus Sharia law should be found constitutionally void.

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[210] Supra note 190.

[211] Ibid.

[212] Ibid.

The position as to the constitutionality of the adoption of Sharia law is yet to be settled by a judicial pronouncement. The Federal Government has declared the adoption of Sharia Law by the different states as illegal, stating that "the further implementation of Sharia law will undermine the very existence of Nigeria."[213] The government based its position on the equality of every Nigerian citizen under the Constitution, where no person should be subject to more severe punishment than others.[214] The Attorney General of the Federation and Minster of Justice, Chief Godwin Kanu Agabi (SAN) urged states that have adopted Sharia law to modify its criminal laws.[215] This will cause religious riots in Nigeria due to the politics involved in the adoption of Sharia law. The federal government is yet to take steps to secure the implementation of this pronouncement. As noted earlier, declarations can be made on paper but in practice the opposite can occur. This pronouncement does not solve the problem of domestic violence. There still exists a law that expressly condones such violence under the Sharia Penal Code, which was and is still in force before Sharia law was adopted.

Constantly criticised by authors, it states:

> "Nothing is an offence which does not amount to the infliction of grievous hurt upon any person and which is done-
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> (d) by a husband for the purposes of correcting his wife such husband and wife being subject to any native law or custom in which such correction is

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[213] Emmanuel Onwubiko, "Nigeria Declares Sharia Rule Illegal" The Guardian Newspaper (Nigeria) on- line: http://ngrguardiannews.com Thursday, March 21, 2002.

[214] Ibid.

[215] Ibid.

recognised as lawful."[216]

Native law or custom has permitted a husband to correct his wife by beating her or carrying out any sort of punishment on her with no fear of being accused of an offence under the law, provided he does no grievous bodily harm. Grievous hurt, as defined by the Sharia Penal Code includes emasculation, permanent loss of sight or the ability to hear or speak, and facial disfiguration.[217] The interpretation of s.55 within the Sharia Penal Code is that, save for the above examples of grievous hurt, a man is justified in beating his wife. Therefore, a man can slap, cane, or other wise injure his wife with backing of the law. S.55 gives primacy to the dependency factor and power relationship. The law assumes the unequal status of both husband and wife in marriage, giving the stronger party the right to correct the weaker party.[218] This law, apart from being discriminatory on the grounds of sex and therefore unconstitutional, is repugnant to natural justice, equity and good conscience and should, therefore, not be applicable in a reasonable democratic society.

Also under this statute, for certain offences such as adultery by a man or woman or enticing or detaining with a criminal intent a married woman, a woman is not competent as a complainant. [219]In respect of these offences the Criminal Procedure Code applicable to Northern Nigeria (this statute administers the penal code) states that:

> "(1) No court shall take cognizance of an offence under section 387, 388,

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[216] Supra note 151at S.55(1) (d).

[217] Ibid at S.241.

[218] This is contracy to Article 7 of the Universal Declaration of Human Rights which guarantees equal rights between men and women and are entitled without any discrimination to equal protection of the law.

[219] Supra note 151at S. 387, 388, 389.

or 389 of the penal code except -

(a) Upon a complaint made by the husband of the woman or in his absence by some person who had care of such woman on his behalf at the time when the offence was committed; or

(b) in the case of the woman being unmarried upon a complaint made by her father or guardian or in his absence by some person who had care of such unmarried woman on his behalf at the time when the offence was committed.

(2) Where the husband, father or guardian referred to in subsection (1) is under the age of eighteen years, or is an idiot or lunatic or is from sickness or infirmity unable to make a complaint some other person may, with leave of the court, make a complaint on his behalf."[220]

This provision explicitly holds that even where the woman is the victim she cannot be an independent complainant. The credibility of her statement is put on trial. A man's testimony is preferred to that of a woman. The section has assumed the unequal status of men and women and, therefore, discriminates on the basis of gender. The obvious deduction from these laws is that cultural practice and social attitude has filtered into the law, which ironically preaches "equality under the law".

It is however unfortunate that even in the present democratic government in Nigeria, such laws are still very much in existence, despite the fact that there is a Ministry of Women Affairs with the responsibility of promoting the interest of women and girls, and influencing government policies in favour of women. Society is not alone in its stereotypical discriminatory attitude towards women; the state is ultimately condoning violence meted out to women.

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[220] Criminal Procedure Code S. 142 (1) (2).

The discriminatory provisions of the Sharia Penal Code have been a constant source of academic controversies but have not attracted the attention of the lawmakers. Those apparently in charge of the women's ministry are concentrating on matters other than the urgent need for society and government to view women's rights as human rights and to put structures in place to guarantee such rights.

VIII. The Matrimonial Causes Act

This statute regulates the institution of statutory marriage in Nigeria. This statute will be a paradigm for the examination of the rights of a battered woman escaping from an abusive relationship. Statutory marriage has to be examined with caution since there are two forms of marriages in Nigeria, and the statute does not regulate them both. The two types are statutory marriage and customary marriage. Islamic marriage is a kind of customary marriage. Each has its peculiar modes of enforcement.

As to statutory marriage, one of the grounds upon which a court can hold that a marriage is broken down irretrievably is the petitioner's identifying such "cruelty or a behaviour by the respondent, that the petitioner cannot be reasonably expected to live with the respondent".[221] Difficulty arises in that the petitioner must satisfy the court that:

> "Since the marriage, and within a period of one year immediately preceding the date of the petition, the respondent has been convicted of:
>
> (i) Having attempted to murder or unlawfully kill the petitioner; or
>
> (ii) Having committed an offence involving the intentional infliction of

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[221] S.15 (2) (c) Matrimonial Causes Act 1990 volume (XII) Laws of the Federation of Nigeria 1990 Chapter 220.

> injury with intent to inflict grievous harm or grievous hurt on the petitioner."[222]

Although this is not the only ground upon which a divorce can be granted, these are the two grounds that a battered woman can utilise in seeking divorce against her batterer, if the batterer is her husband. In the practical application of this section, however, it is almost impossible legally for a woman to leave a battering relationship, even where her life is in danger, until there has been a prior record of a conviction against the respondent for attempted murder or grievous hurt. One wonders how likely a conviction is when the legal system has denied her access to her rights. Law enforcement agents treat this as a mere domestic dispute and offer to settle it between the parties. The society encourages "family privacy" and most disputes are settled in the home by the extended family. Even her peers jeer at her if she openly reveals family secrets. Making use of this provision demands her persistence and courage. These are parts of the laws that need to be reformed.

As stated above, one source of Nigerian law is customary law. It is however important to examine the different customary practices that discriminate against women and go against the provisions of the 1999 Constitution that guarantee and protect women's rights and also what the courts have done in respect of these practices.

Customary law has succeeded in tying Nigerian women to their cultures. Due to the diversity of cultures in Nigeria, with each ethnic tribe having its indigenous customs, the state has a duty to ensure that such Nigerian culture which enhance human dignity is preserved and enforced. Apart from the traditional practices identified in Chapter One as being discriminatory against women, the major area where women are discriminated against is inheritance and property rights under customary law.

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[222] Ibid at S.16 (1) (e).

IX. Inheritance and Property Rights under Customary Law

Statutory law, enables spouses to inherit from each other and where there is a will there is no interference with its provisions.[223] The practical realisation of this provision is yet to be achieved in various Nigerian tribes. Amongst the Ibo's of Eastern Nigeria, under statutory marriages, the laws of succession are usually disregarded where the man dies without making a will.[224] It is presumed that only the males have a right to inherit from the late husband's assets.[225] This presumption by the family does not only show gender discrimination but also violates their constitutional rights to acquire and own landed property under the 1999 Constitution.[226] A will provides an exception but most Nigerians are hesitant to make one.

Also, among the Yoruba's of Western Nigeria, widow inheritance is prevalent. The woman is regarded as an object to be inherited by the late husbands family especially if she was married under customary law.[227] She can only take her own personal property, which she acquired either before or during the marriage, the remaining is distributed, between her husbands family if the husband dies intestate.[228] In practice some women might not be entitled to any property, her in-laws dispute these properties with her and she is sometimes forcefully removed from her husband's home after being accused of causing his untimely death. Moreover, the Ibo customary law, discriminates against women in the disposition of property acquired during marriage, in that a woman requires her husband's permission, while her husband does not require that of his wife to execute the same act.[229]

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[223] Supra 109 at 21.

[224] Ibid

[225] Ibid.

[226] Supra note 41 at S.43.

[227] Supra 109 at 30.

[228] Ibid.

Islamic law also recognises a wife's entitlement to properties acquired before and during and the marriage.[230] The property rights of a wife after divorce depend on the type of divorce adopted.[231] Where the divorce is by *'talaq'* both spouses are entitled to their individual possessions, acquired before and after the marriage.[232] In divorce by *'khulu'*, the woman gives part of her property to the man in order to be completely free from him.[233] This is mostly carried out when the divorce is requested for by the wife. A divorce by *'ian/qazf'* has the same property rights as the *talaq*, if proved beyond reasonable doubt.[234] A divorce by *'ila'i'* also has the same property rights as *talaq*.[235] *'Zihar'* is a form of divorce that is no longer recognised; and spouses have a right to use and dispose their properties in the manner they both prefer.[236]

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[229] Ibid. at 31.

[230] Dr. Y. Aboki, " Property Rights of the Customary and Islamic Law Spouse in Divorce: Issues, Problems and Proposal for Reform" in O. Ajai, T. Ipaye, eds., *Rights of Women and Children in Divorce* (Lagos: Frankad Publishers, 1997) 143 at 153.

[231] Ibid.

[232] Ibid. at 154. Under this type of divorce only men are given the right to pronounce this against their wives. Once a man pronounces this three times it is considered irrevocable. This is pronounced when the wife is in a state of purity (free from menstrual blood and the blood of child birth). This is regarded as a woman's clean period.

[233] Ibid. at 155. *khulu* is a form of payment to obtain liberty from a marital obligation.

[234] Ibid. at 156. In a divorce by *lian/qazf* the husband usually requests for this based on allegation of unfaithfulness made against the wife.

[235] Ibid. at 157. *ila'i* is a type of divorce obtained when the husband refuses to have sexual intercourse with his wife. Under statutory marriage this would render it void.

Most Nigerian women are financially disadvantaged in their marriage. Where money is made, for example, through trading, the money is expended for the benefit of the children and husband. She hardly has any economic earning power due to her role at home and what she earns is either taken by her husband or used for the family. In a battering relationship, her productivity level diminishes from lack of concentration at work, or from a high level of absenteeism caused by the injuries sustained. She eventually ends up being economically dependent on her husband and cannot leave him. Where divorce is an option, she still has no claim to her husband's property, either jointly or solely acquired, because of the restrictions of customary law. Statutory marriages are an exception.

These customary practices lack constitutional backing. Under the Constitution, the state has a duty to ensure that Nigerian culture, which enhances human dignity, is preserved and enforced:

> "The state shall-
> (a) protect, preserve and promote the Nigerian Cultures which enhance human dignity and are consistent with the fundamental objectives..."[237]

The Constitution itself recognises the issue of discriminatory cultural practices, and by this recognises that all discriminatory customs should be totally excluded, suspended or abrogated. These traditional practises have been examined in Chapter One and are obviously not in line with the provisions of the Constitution. The society is dynamic. Cultural practices which a repugnant to natural justice need to be reformed.[238]

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[236] Ibid. at 157. This type of divorce is akin to marriages under statutory law which become void because either of the parties fell into one of the prohibited degrees. The only difference being that under *'Ziha'* these women do not actually fall into these prohibited groups but their husbands use expressions that state that they are within these group. This has however been discontinued.

[237] Supra note 41 at S.21.

The Court of Appeal in *Mojekwu* v. *Mojekwu*[239] has set landmark precedent for courts to follow in the supremacy of the Constitution over customary law. It rejected a discriminatory customary law on inheritance as contrary to democratic values. Justice Niki Tobi declared the custom of Oli- Ekpe (sons and brothers but not daughters of the deceased to inherit) to be “repugnant to natural justice equity and good conscience.”[240] He further characterised all “customs which discriminate against womenfolk in Nigeria and regard women as inferior to men folk, as societal discrimination on grounds of sex which, apart from being unconstitutional, are an antithesis to a society built on the tenets of democracy.”[241]

In *Mojekwu* v. *Ejikeme*,[242] this same court rejected the customary practice of Nrachi, in which “a woman may qualify to inherit from her father if she agrees to remain perpetually unmarried and raise children for her father, especially male heirs.”[243] Women who under go this ceremony become honorary men for the purpose of inheritance. For the court, the practice is

> “ preposterous as compromising the basic tenets of family life that institutionalised marriage as the foundation of that fulfilment.”[244]

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[238] Supra 37 at 166.

[239] (1997) 7 N.W.L.R 283 at 305.

[240] Ibid.

[241] Ibid.

[242] (2000)5 NWLR 402 at 406.

[243] Ibid.

[244] Ibid. at 407.

Justice Niki Tobi, relied on the Women's Convention to illustrate that consensus and public policy dictate the abolition of traditional practice that discriminate against and are disadvantage to women.[245] For the first time, a Nigerian court utilised the Convention for the protection of women in a domestic case.

These changes are an acknowledgement of the supremacy of the Constitution, which presently still remains the grudnorm in Nigeria. A change in laws and customary practices in Nigeria is only a matter of time. Gradually with all these substantial changes in the legal system, all discriminatory laws and practices will disintegrate in the society. Nigerian women are beginning to rise up to their rights. The moment they recognise their rights and prosecute them at law, persistent violence against women will be history. Judicial pronouncements against such discriminatory laws and practices will help the Constitution have practical supremacy, and, hence, justice will not only be done but will be seen to be done and will command the confidence and respect of the people.

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[245] Supra note 242.

CHAPTER 3

REGULATORY PRACTICES AND GOVERNANCE OF DOMESTIC VIOLENCE IN NIGERIA

I. Introduction

As revealed in Chapter two, the Nigerian Constitution guarantees and protects the rights of women. The judiciary, being the instrument for the interpretation of these laws, has maintained its independence by carrying out the provisions of the Constitution and declaring laws inconsistent with the Constitution void to the extent of their inconsistency and, thus, maintaining and emphasising the supremacy of the 1999 Constitution of the Federal Republic of Nigeria. As noted above, these laws have been in existence, but what maintains is an absolute disregard for women's rights in the implementation of these laws. The cultural stereotype within the society has downplayed women's rights as human rights. The government has introduced many policies to curb various harmful traditional and cultural practices that violate women's rights. Most of these policies are yet to be passed into law.

Globally, there is an acknowledgement of the persistent violation of women's human rights. Many international organisations have, through various monitoring bodies, established committees to look into these issues. The United Nations Commission on the Status of Women, (hereinafter called UNCSW) "a subsidiary body of the United Nations Economic and Social Council (hereinafter called ECOSOC), is the only international intergovernmental body responsible for the promotion of women's rights."[1] The recommendations made by UNCSW have led to he enactment of various international instruments protecting women's political, social, economic and cultural rights.[2] Many countries in the recognition and acknowledgement of the deteriorating rights of women have acceded to these international instruments protecting the rights of women and have taken the further step, of ratifying them. Nigeria has also participated in all such deliberations and has further ratified the major international instruments protecting women.

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[1] M.E. Galey, "International Enforcement of Women's Rights" (1984) 6 H. R. Quart. 463 at 464 - 465.

Thus, in addition to the domestic laws in Nigeria that protect women's rights, there are also international laws that guarantee and enforce the rights of women. These laws are sufficient to protect the rights of women in a nation. Yet, despite the existence of these laws that protect women in Nigeria acting in consonance with some other laws and practices that condone the violation of the rights of women, what has the Nigerian government done to ensure the protection of the rights of women in society and in the family? How will proposed policies aid in the elimination of violence against women; and what is the implication of international laws for the protection of women's rights in Nigeria? These Chapter addresses these questions. The role and enforcement of international law in the protection of women's rights in Nigeria will also be examined. In sequel to this, various international conventions protecting women's rights signed and ratified by Nigeria will be analysed; and their role under Nigerian law will be examined.

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[2] Political Rights of Women (1952), Nationality of Married Women (1957), The Consent to Marriage, Minimum Age for Marriage and Registration of Marriages (1962), and the Declaration on the Elimination of Discrimination Against Women(1976).

II. Nigerian Government Policies Protecting the Rights of Women

From the preceding chapter, one understands that a policy is not law until it is presented to the legislative house and with the required number of votes becomes a law. Various women's human rights organisations and other NGO's have put considerable pressure on the Nigerian government to enact laws to secure the protection of women's rights and to abolish or reform discriminatory laws in order that the fundamental human rights of women will be actualised. Having identified the various practices that lead to violence against women in Nigeria, one of the basic causes that lead to this persistent crime is the discriminatory cultural and traditional practice against women. The Ministry of Women Affairs in Nigeria identified that this practice of female subordination is inculcated in the female child from early childhood. Female children are separated from males. Some female children are withdrawn from school and given away in marriage or retained at home to do the house chores. These female children are further exposed to and become targets of sexual and domestic abuse.[3] Early marriage for young girls impedes their rate of self-development.[4] They end up being liabilities on their husbands, and in the eventuality of a divorce, they become financially handicapped since most of them are too young, having little recourse to education, and cannot generate revenue.[5] This is usually the trend experienced by these young girls. There is usually a high rate of abuse recorded in such marriages since the men take advantage these young girls and expect them to carry out their orders.[6] In recognising this issue, the Nigerian government has made positive steps to deter such acts. The Gombe State government, acknowledging the prevalence of this practice in the State and Northern Nigeria, enunciated a policy, which became a law. This law punishes parents who withdraw their children from school for the purpose of marriage. It states:

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[3] T. U. Akumadu, *Beasts of Burden: A Study of Women's Legal Status and Reproductive Health Rights in Nigeria*, (Lagos (Nigeria): The Women's Rights Project Civil Liberties Organization, 1998) at 52.

[4] Ibid.

[5] Ibid.

> "Any parent who withdraws his/her female ward from school for early marriage will be liable to imprisonment for six months or subject to a fine."[7]

According to the only female member of the State House of Assembly, Hajiya Maryam Abduladir, "this law is intended to encourage female wards to acquire western education".[8] Also in this line, it would eradicate V.V.F, which can also be caused by early marriage due to their under developed pelvic of these young girls.[9] She further stated that these girls should be given out in marriages only upon attaining the age 18 - 19, when they have had substantial education such as completing high school and are considered matured to enter into a marriage contract.[10] The Gombe State Government has made this policy gender neutral applying to both males and females. However, it establishes early marriage as the only ground for punishing parents for withdrawing their children from school. Other reasons for withdrawal include payment of debt and lack of funds. In as much as this policy has as its objective of reducing child brides, it can further be made to encompass other circumstances in which parents withdraw their children from school.

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[6] Ibid.

[7] "Withdrawal of School Girls Banned in Nigeria" *Violence Watch* 2:4 October-December 2000 at 18.

[8] Ibid.

[9] Ibid.

[10] Ibid.

The Federal Government is yet to pass a bill through the National Assembly, making it a crime to have any form of "sexual act" with girls below 18 years.[11] This bill is christened the "Teenage Sexual Act."[12] This bill will also make this act a criminal offence attracting life imprisonment for the perpetrators. The Nigerian Criminal Code already has provisions that makes it an offence for any person to defile girls under the ages of thirteen and sixteen respectively.[13] The proposed bill increases the age to eighteen.

There seems to be a conflict with the current laws and this policy, if and when it is passed into law. In States where child marriages have not been outlawed, what will be the position of a man who marries a girl below the age of 18 years and has sexual contact with her? Can the proposed law apply or will this law be excluded in marriage institutions?

As regards statutory marriages, the *Marriage Act*[14] states,

> "If either party to an intended marriage, not being a consent widower or widow, is under 21years of age, the written consent of the father, or if he be dead or of unsound mind or absent from Nigeria, of the mother, or if both be dead or of unsound mind or

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[11] "New Law Bans Sex with Girls Under 18 years" *Guardian Newspaper* 7 August 2001 online: <http://www.ngrguardiannews.com/news2/nn828610.html> (date accessed: 8 July 2001).

[12] Ibid.

[13] Nigerian Criminal Code, 5, 1990 c.77, S. 218, S. 221.

[14] Laws of the Federation of Nigeria 1990 C. 218.

> absent from Nigeria, of the guardian of such party, must be produced annexed to such affidavit as aforesaid before a licence can be granted or a certificate issued."[15]

In this instance the consent of the father is indispensable, and only when he is absent, that the mother can consider giving consent.[16] This Act does not expressly provide the age limit for marriage, it simply expresses age group in which parental consent is required. Unlike the *Marriage Act* the *Matrimonial Causes Act*[17] does not provide an age limit for parental consent or for marriage. Under common law, the age of puberty is 14 for boys and 12 for girls.[18] This itself is discriminatory. This disparity in age has been attributed to the biological fact that girls tend to mature physically earlier than boys. As regards relationships such as marriage, physical maturity alone will not suffice.

Under customary law, although there is no age limit for betrothal, parental consent is required before the actual marriage of the minor.[19] In some states such as the Eastern States; the age of betrothal has been laid down by the *Age of Marriage Law 1956*,[20] which applies only to customary marriages. It states:

> "A ... promise or offer to marriage between or in respect of persons either of whom is under the age of 16 shall be void."[21]

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[15] Laws of the Federation of Nigeria 1990 C. 218, S.18.

[16] Supra note 3 at 19

[17] Laws of the Federation of Nigeria 1990 C. 220.

[18] *Harrod* v. *Harrod* (1954) 69 E.R. 344.

[19] E. I. Nwogugu, *Family Law in Nigeria*, (Ibadan: Heinemann Educational Books (Nigeria) Ltd, 1974) at 20 -21.

[20] C.6 Laws of Eastern Nigeria 1963.

[21] Supra note 3 at 20.

Under Islamic law, parents can carry out a betrothal for a child from the day of birth.[22]

There is no express provision in any Nigerian legislation for the age of marriage. The incidence of child brides mostly occur under customary laws, which, apart from Eastern Nigeria, does not state the age limit for marriage. How can we reconcile the provisions of this proposed legislation with this recurrent incidence in Nigerian law and practice? How then can the provisions of the Teenage Sexual Act apply to a man who has sexual contact with his teenage wife? As between strangers, the Teenage Sexual Act will apply without any difficulty. As an added complexity, the Criminal Code, Penal Code and customary law indicate marriage as an implied consent to sex; as a result, marital rape is not a crime under Nigerian statutes.

Customary law, as noted above in Chapter Two, is subject to validity test as prescribed by statute. That is, customary law will apply only if it passes certain tests as prescribed by statute. It must not be "repugnant to natural justice, equity and good conscience, must not be incompatible either directly or by implication with any law, and must not be contrary to public policy."[23] Judicial decisions have held certain customary laws invalid due to their incompatibility with the Constitution (a law in force) and also for it being repugnant to natural justice, equity and good conscience.[24] Applying this test to the Teenage Sexual Act, it will be a law in force, and customary law that legalizes marriage to a teenager will be contrary to it. Thus, a perpetrator under this legislation will be held liable.

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[22] Supra note 3 at 20.

[23] A. O. Obilade, *The Nigerian Legal System*, (London: Sweet & Maxwell, 1979) at 100.

[24] *Mojekwu* v. *Mojekwu* (1997) 7 N.W.L.R 283 at 305, *Mojekwu* v. *Ejikeme* (2000) 5 N.W.L.R 402 at 406.

As regards statutory marriages, there has to be a specific interpretation of terms in the proposed legislation such as the definition of victim, perpetrator and sexual act. Presently, the proposed legislation is ambiguous. It has to be more explicitly defined. "Sexual act" can mean anything that has a sexual connotation to it. The policy makers did not envisage such conflicts in the application of this legislation. This issue ought to be addressed before the passing of this policy into law.

In resolution of the envisaged conflict, the Federal Government of Nigeria designed a new national policy on women called the "Charter for Womanhood."[25] This policy, *inter alia,* bans the marriage of women less than 18 years of age. This Charter when passed into law by the National Assembly will stop the incidence of child brides and will give female children the opportunity and the right to self development, and ultimately guarantee their fundamental human right to education and proper mental development. This Charter is all encompassing. It also intends to provide for mandatory health services, and to prevent other harmful traditional practices and domestic violence. It also embraces other issues such as inheritance as regards the discriminatory attitude towards women and children, especially female children.

Various human rights organizations are canvassing support for a bill on "Violence Against Women in Nigeria."[26] A conference organised by the International Human Rights Law Group in Nigeria, resolved on the establishment of a task force, aiming at drafting a bill on violence against women as other African countries such as Namibia, Kenya, Zimbabwe and South Africa have done.[27] This committee will do all that is necessary in paving the way for the successful implementation of this bill. This bill is yet to be enacted.

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[25] "Charter For Womanhood" *Vanguard Newspaper* 14 June 2001 Online: <www.vanguardngr.com/news/articles/2001/june/26062001/vc260601.htm> (date accessed: 25 June 1002).

[26] "Eliminating Violence Against Women" *Violence Watch* 3:1 January-March 2001 1 at 4.

A bill against trafficking (prostitution) in women, the Anti-Human Trafficking Bill, was recently presented to the National Assembly, by the wife of the Vice President and founder of an NGO called Women Trafficking and Child Labour Eradication Foundation (hereinafter called WOTCLEF).[28] WOTCLEF has carried out major projects in ensuring the rehabilitation of women involved in prostitution. This issue, which is a crime in some developed countries, has slowed the pace of growth in Nigeria and further ruins national image. An estimated number of "5,000 Nigerian girls are victims and are deported due to trafficking; and about 50,000 between the ages of 15 - 35 are all across Europe engaged in this trade."[29] This implies that a significant number of Nigerian women are involved in this trade which degrades the pride of womanhood.

The actions of the government have shown a positive step towards the acknowledgement and elimination of violence against women. After intense pressure from various human rights groups, the government has made policies towards the eradication of certain practices against women. All these policies, if and when passed into law, will be a step forward towards the attainment a society free of violence against women.

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[27] Ibid.

[28] H. Bodunrin, "Atiku's Wife to Sponsor Bill on Women Trafficking" *This Day Newspaper* 24 February 2002 online: <http://www.thisdayonline.com> (Date accessed 15 March 2002).

[29] Ibid.

Without these policies, Nigeria still has laws that guarantee the fundamental rights of women against violence, but such laws have not been adequately utilised in eradicating this violence. When these policies are passed into law, there is no guarantee that they will be properly utilised for the benefit of the object of their creation. As with many laws in Nigeria, there will be a selective observance of its requirements, except, proper monitoring bodies are set up to ensure that the policy serves its purpose. This is the situation of various international conventions that Nigeria has ratified. International law also protects the fundamental human rights of women. Nigeria has indirectly secured such relevant conventions, by the provision in the Constitution, which allows treaties to have the force of law only when enacted into law by the National Assembly. Nigeria has utilised this provision, by adopting the African Charter as a domestic law, having the force of law in Nigeria. Various international human rights conventions protecting the human rights of women are also incorporated in this Charter, as shall be analysed below in this chapter.

III. Nigerian Women's Rights: An International Perspective

International Human Rights Law is that aspect of international law which deals with "the protection of individuals and groups, against violations by government of their internationally guaranteed rights."[30] Similarly, international humanitarian law, is to afford legal protection of human rights.[31] Human rights of women are a matter of legitimate international concern and are appropriately a part of international law legal system. The Vienna Declaration states that:

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[30] Dr. M.T. Ladan, " International Human Rights Law: Development Scope and Enforcement/Monitoring" in A.O. Obilade, ed., *Text for Human Rights Teaching in Schools* (Lagos: Constituional Rights Project, 1999) at 61.

[31] Ibid.

> "The Human rights of women and of the girl-child are an inalienable, integral and indivisible part of universal human rights. The full and equal participation of women in political, civil, economic, social and cultural life, at the national, regional and international levels, and the eradication of all forms of discrimination on grounds of sex, are priority objectives of the international community."[32]

Human rights concerns are not simply within the exclusive domestic jurisdiction of a state though at the same time the principle of internal sovereignty of a state is respected. States have a national and international obligation to protect citizens; a violation of these rights is contrary to national and international laws, which would incur liability on the part of the state.[33] The persistent violation of citizens fundamental human rights in some developing nations calls for international attention.[34] This is the current situation in Nigeria on the death sentence that has been passed on Amina Lawal on charges of adultery which is a criminal offence under Sharia law. Various international human rights organizations are protesting against the violation of this woman's human rights. Under international human rights law, the standard of proof for each state is basically objective.[35] This disproves the theory of cultural relativism, since human rights are universal.[36] However, some states that violate human rights, carry this out under the pretext of cultural relativism and internal sovereignty in order to prevent international intervention.[37] These states are persistent violators of human rights and seek to avoid their responsibility to protect human rights. The whole essence of the United Nations Charter indicates the universality of human rights. Nigeria as a nation and a state party to various United Nations human rights conventions does not share in the theory of cultural relativism. This can be deduced from the positive efforts made to ratify various international human rights treaties. There are few effective channels to carry Nigerian women's voices, concerns and interests into the human rights arena, thereby sidelining Nigerian women in the international sphere. However, as indicated earlier, it is only recently that NGO's concerned with human rights have increased their pressure on the Nigerian government to recognise the particular disadvantages faced by Nigerian women. As a result, various policies are on the way to being enacted into law to protect the rights of women.

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[32] Paragraph 18 part 1 of the Vienna Declaration online: http://www.hri.ca/vienna+5/vdpa.shtml.

[33] N. Pillay, "Violence Against Women: State-Sponsored Violence" in *Bringing International Human Rights Law Home* (United Nations:2000) 61at 63.

[34] Supra note 30 at 64.

[35] Ibid.

[36] Ibid.

States have an obligation to maintain the human rights of their citizens. As stated above states are to be held liable, through their action or inaction for the violation of the human rights of its citizens without any gender restriction.[38] The 1999 Constitution expressly indicates that the government and its agencies must follow constitutional provisions and any act contrary to these is unconstitutional and void. This includes especially the provisions of Chapter Four that deals with the fundamental human rights of all Nigerians.[39]

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[37] Ibid.

[38] C. Romany, "State Responsibility Goes Private: A Feminist Critique of the Public/Private Distinction in International Human Rights Law" in R. Cook *Human Rights of Women: National and International Perspectives* (USA: University of Pennsylvania Press, 1994) 85 at 99.

[39] Constitution of the Federal Republic of Nigeria 1990 S.1 (1), (3) .

Under the Nigerian Constitution, women are protected from violence by asserting their rights under chapter four. The Nigerian Government has a duty of ensuring that these rights are enforced and where violated, the Fundamental Human Rights Enforcement Procedure Rules should be used in seeking redress. This implies that, personal rights are also protected under international law, which includes rights against domestic violence.[40] The question that follows this is: can a state be held liable for private actions? Basically, under international law, the perpetrators of human rights violations are the state and its agents.[41] The direct perpetrators of domestic violence are basically private; how then can the state be held responsible and domestic violence be treated as an international human rights violation? Some authors deduce this state responsibility, from the recent argument and acceptance that "a state can be held responsible for its actions and inactions."[42] Specifically, where a state has a history of persistent violation of women's rights, and its government remains dormant over the enactment of criminal legislation against such violence, this fact ought to be revealed, so as to create state responsibility.[43] An example of state responsibility for private actions can be seen in the Human Rights Watch Women's Project condemnation of the acceptance of the honour defence in Brazil, which "justifies a man's actions against his wife or her lover for offending his honour."[44] The project stated that

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[40] K. Roth, "Domestic Violence as an International Human Rights Issue in International Human Rights Law" in R. Cook ed., *Human Rights of Women: National and International Perspectives* (USA: University of Pennsylvania Press, 1994) at Chapter 13.

[41] Ibid at 329.

[42] Ibid.

[43] Ibid. at 330.

> "this practice condones domestic violence and that the continued existence of this defence implies the state's acceptance of this practice and, thereby there is an official condoning of domestic violence."[45]

That is, in accepting the honour defence, the state deviates from its duty to protect citizens from such violence, thereby ultimately condoning such acts. Human Rights Watch have also held the Brazilian government responsible for failure to legislate against private landowners who employ forced labour.[46] Where the government in a state, despite the persistent alarming increase in violence against women, makes no effort to eradicate it, it is indirectly condoning it by its inaction and can be said to be indirectly responsible for such violence under international law.

Authors have added that it may be difficult to prove a state's responsibility for private human rights violations where it has taken some form of action in addressing this violence even though it has not totally eliminated it.[47] This may be the case in Nigeria, where recently, due to international pressure, the Federal Government has pronounced Sharia law unconstitutional. The government may claim that the victims have not exercised their legal right against the persistent violation of their rights under Sharia law, thereby limiting the government's power in addressing this violations by a judicial pronouncement.

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[44] Ibid. at 331.

[45] Ibid.

[46] Ibid. at 330.

[47] U.A. O'Hare, "Realizing Human Rights For Women" (1999) 21 H. R. Quart. 364 at 399.

A better theoretical framework for states responsibility has been suggested. The "discriminatory based theory of state responsibility."[48] This is based upon the principle of equality under the law, as provided for in various national and international instruments adopted by different states.[49] In Nigeria this discrimination is glaring, when a comparison is made between the prosecution of crimes against women as opposed to crimes against men. The sexists laws present in the different legislation and the application of the remaining laws that protect women against gender discrimination by various agents of states shows clearly, the manifestation of this discriminatory theory. As further stated by Kenneth Roth,

> "where it is shown through statistical data that domestic violence receives less attention and is less prosecuted than other crimes, especially in the case of spousal battery, a case of discrimination can be made."[50]

This depicts the Nigerian situation, which is against various international conventions signed and ratified by Nigeria. This approach implies a mandate upon states to ensure that crimes against women receive thorough investigation and prosecution, as do crimes against men. This is in accord with the equality status granted and protected under the United Nations Charter.

The *Convention on the Elimination of All Forms Discrimination Against Women* (CEDAW) can be referred to as the international bill of rights for women. This Convention enjoins "state parties to eliminate discrimination against women in order for them to fully enjoy their civil, political, economic, social and cultural rights."[51] CEDAW provides that

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[48] Ibid.

[49] Ibid.

[50] Supra note 40 at 334-336.

> "state parties must pursue, by all appropriate means, measures to eliminate discrimination against women by any person, organisation or enterprise."[52]

By this, a state that has ratified this Convention has a duty to prevent, prosecute, and do all that is necessary to prevent discrimination against women.[53] These states also have to ensure that women to do not have limited access to claim redress or compensation under the law. If they do not carry out this obligation, they will be seen as condoning these acts. A state can 'therefore' be held liable where there is evidence of lack of diligent prosecution of actions that violate women's human rights and giving commensurate compensations for these violations.[54] This act by the state additionally violates a woman's fundamental human rights such as "right to life, freedom from torture, inhuman and degrading treatment and her right to equal treatment before the law."[55]

Litigation under domestic violence would be an avenue to change societal view of this crime as a violation of women's fundamental human rights.[56] This will show that the victims of domestic violence are entitled to state protection against domestic violence as any other form of state related violence.[57] The recommendation CEDAW made at its 11th session in 1992 supports this view and further makes it clear that both public and private acts of violence are in the domain of state responsibility. This includes domestic violence and lack of adequate laws against it, are a violation of a woman's fundamental human rights. It is gender based violence, which for CEDAW,

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[51] Preamble to Convention on the Elimination of all forms Discrimination Against Women

[52] Ibid. at Article 2(e).

[53] R. J. Cook, "State Accountability Under the Convention on the Elimination of All forms of Discrimination Against Women" in R. Cook ed., *Human Rights of Women: National and International Perspectives* (USA: University of Pennsylvania Press, 1994) 228 at 236.

[54] Ibid. at 237.

[55] K.M. Culliton, "Finding a Mechanism to Enforce Women's Right to State Protection From Domestic Violence in the Americas" (1993) 34 Harvard International Law Journal at 507-508.

[56] Ibid. at 514 -515.

> " Impairs and nullifies the enjoyment by a woman of human rights and fundamental freedoms under general international law or under specific human rights conventions."[58]

The rights at issue include "rights against physical, mental or sexual harm or suffering, and against acts of coercion and other deprivations of liberty."[59] The recommendation defines family violence as:

> "One of the most insidious forms of violence against women and prevalent in all societies. Within family relationships women of all ages are subjected to violence of all kinds, including battering, rape, other forms of sexual assault, mental and other forms of violence, which are perpetuated by traditional attitudes. Lack of economic independence forces many women to stay in violent relationships. The abrogation of their family responsibilities by men can be a form of violence and coercion. These forms of violence put's women's health at risk and impair their ability to participate in family life and public life on the basis of equality."[60]

The committee, under its specific recommendations, enjoins state parties to:

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[57] Ibid.

[58] Convention on the Elimination of all forms of Discrimination Against Women (CEDAW) General Recommendation No.19 (Eleventh Session,) 1992.Online: <http://www.hku.hk/ccpl/cedaw/wgr19.htm> (Date accessed: 20 October 2002)

[59] Ibid. recommendation 6.

[60] Ibid.

> "Take all legal and other measure that are necessary to provide effective protection of women against gender-based violence, including, *inter alia*:
>
> (i) Effective legal measures, including penal sanctions, civil remedies and compensatory provisions to protect women against all kinds of violence, including, inter alia, violence and abuse in the family, sexual assault and sexual harassment in the work place;
>
> (ii) Preventive measures, including public information and education programmes to change attitudes concerning the roles and status of men and women;
>
> (iii) Protective measures, including refuges, counselling, rehabilitation and support services for women who are the victims of violence or who are at risk of violence."[61]

It then recommended "state parties to take effective measures to overcome all forms of gender-based violence, whether by public or private act."[62] It was also further recommended that laws against gender-based violence should fulfill their purpose of enactment by offering adequate protection to women and further ensure equality under the law.[63] The Committee stated that in addition to these actions, state parties should carry out a massive educational enlightenment programme, to educate men and women on gender equality and also train state agents on how to handle gender related issues.[64] All these measure would ensure the effective implementation of the provisions of the convention. This convention basically removed domestic violence from the stereotypical belief that it belongs only to the realms of private acts.

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[61] Ibid.

[62] Report of the Committee on the Elimination of Discrimination Against Women UN DOC (1992) at 5 online: <http://www.sigi.org/Resource/genrec19.htm.>(date accessed:26 May 2002)

[63] C. Grossman, "Domestic Violence in International Law and the Inter-American System" in *Bringing International Human Rights Law Home* (United Nations:2000) 50 at 53.

[64] Supra note 58 at Recommendation 24 (b) & (t) (ii).

A state's compliance with these recommendations is limited to its report made to the committee and the committee can only persuade states to comply with it.[65] Many have advocated for international political pressure on state parties in order to secure compliance with the recommendation of CEDAW.[66]

A Colombian court held that the failure of the state to provide legal mechanisms for the protection of a victim of domestic violence violated her "rights to life, integrity and security of person."[67] In *Vela`squez-Rodri`guez* v.*Honduras,*[68] in reaching the conclusion that a state is responsible for disappearance, even where carried out by non-state agents, the court held that:

> " An illegal act which violates human rights and which is initially not directly imputable to a state (for example, because it is the act of a private person...) can lead to international responsibility of the state not because of the act itself, but because of the lack of due diligence to prevent the violation or to respond to it as required by the Convention."[69]

The Court emphasised that the important issue was whether the government condoned the violation of rights protected under the Convention, or it did not provide effective legal mechanisms to punish the perpetrators.[70] These actions incurs state liability internationally.[71] For instance, in Europe, states have the additional human rights responsibility to create ways to ensure that people are not deprived of enjoying their fundamental human rights.[72] In furtherance to this requirement, the European Court of Human Rights held in *Airey* v. *Ireland*[73] that,

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[65] Supra note 55 at 528.

[66] Ibid. at 529.

[67] Supra note 63 at 55.

[68] Inter-American Ct. H.R. 35 (Judgement of 29 July 1988).

[69] Supra note 47 at 395.

> "Ireland's failure to provide financial assistance to a woman seeking a judicial separation from her violent spouse violated her right to respect for her family life."[74]

In short although spousal battery is a form of violence mostly directed at women. A state has an obligation to carry out all that is necessary to protect women against this violence under international law. Spousal battery is a private act that involves private individuals, states have a responsibility to protect the victims. Hence, state parties have both a domestic and international obligation to make laws effective through the legislature, judiciary, law enforcement agents, to protect women against family violence.

Furthermore, a state can be held responsible for its inadequate commitment towards the protection of battered women, where laws exist in the state that condone violations of women's human rights.[75] In addition to national laws that protect women, international law has also provided a means for battered women to seek redress both at national and international level for lack of adequate protection from their countries.[76] Under the rules of international law, a victim must make use of the domestic ad judicatory system and try to exhaust all available means, before a complaint can be presented before the international human rights commission; unless such means are not existent, an exception can be made.[77]

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[70] Ibid.

[71] Ibid.

[72] Ibid. at 396.

[73] 32 Eur. Ct. H.R. (1979).

[74] Supra note 47 at 397.

[75] Supra note 55 at 516.

Since Nigeria's ratification of this convention in 1985, the Federal Government has not made adequate efforts to eradicate family violence from the society; rather, what obtains is the persistent recurrent abuse of women's rights within the family. An added complication is the adoption by some states in Nigeria of Sharia law, which expressly violates the human rights of women. There is an obvious discrimination in the prosecution of crimes committed against women as revealed in the preceding chapter. Some laws condone violence against women, while others tend to favour male victims of crime over female ones - such as the law on indecent assault. As identified above, part of the obstruction to the prosecution of spousal battery are the law enforcement agents, who basically settle this issue on police counters or trivialise it as a mere domestic dispute. Lack of willingness to report this crime by the victims arises partly from the role the law enforcement agents play in settling this issue between the parties. These agents of the state, in resolving the conflict, are acting as an obstruction to the attainment of justice and, in my view, they are indirectly condoning the violence. The failure of law enforcement agents to adequately prosecute domestic violence like other crimes can be seen as a failure of the state to discharge its responsibility to protect women from this crime. In addition, the Nigerian government is indirectly condoning domestic violence by the presence of discriminatory laws in its legislation. Domestic violence is not an issue solely within the domestic jurisdiction of a state. It is part of violence against women that various international conventions forbid. The ratification of this convention signifies an acknowledgement of the existence of these discriminatory practices in Nigeria.

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[76] Ibid. at 523.

[77] Ibid.

IV. Women's International Human Rights Conventions

International conventions are synonymous with treaties and can be referred to either as "covenants, conventions, protocols or charter".[78] A treaty is

> "an international agreement concluded between states in written form and governed by international law, whether embodied in a single document or in two or more related instruments, and whatever its particular designation."[79]

A party to a treaty indicates willing consent to be bound by its provisions, while a signatory agrees with the provisions, but is not bound by it though this may occur in future.[80] Upon the ratification of a treaty, a state has an international obligation to abide by its provisions in good faith.

Treaties can be bilateral or multilateral.[81] A bilateral treaty as the word "bilateral" suggests is a reciprocal agreement between two states, while multilateral treaties requires several state's ratification before it enters into force.[82] Focus will be directed towards multilateral treaties. By ratifying and acceding to these treaties, member state are obligated to decline from having laws within the states that contradict the provisions of these treaties, and further makes them binding in the states. However, this can take place where the provisions of the treaty have been approved by legislative process in the state.[83]

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[78] Dr. M.T. Ladan, "The Sources of International Law" in A.O. Obilade, ed., *Text for Human Rights Teaching in Schools* (Lagos: Constitutional Rights Project, 1999) 39 at 41.

[79] Article 2 Vienna Convention on the Law of Treaties online:<http://www.greenpeace.org/~intlaw/vien-tr.html>(date accessed: 27 May 2002)

[80] Supra note 78 at 42.

[81] Ibid.

International conventions protecting women's rights includes

(i) United Nations Charter

(ii) Universal Declaration of Human Rights

(iii) International Convention on Economic, Social and Cultural Rights

(iv) International Convention on Civil and Political Rights

(v) Convention on the Elimination of All forms of Discrimination Against Women

(vi) Declaration on the Elimination of Violence Against Women.

Nigeria is a state party to (i) and (iii) - (vi), and is a signatory to (ii) the Universal Declaration of Human Rights. This international bill on human rights applies to men and women equally. This is one of the first bill on human rights proclaimed by the United Nations.[84] The purpose of this convention is "to serve as the common standard of achievement for all peoples and all nations."[85] The fundamental principle underlying the rights in this declaration is in the declaration's preamble, which recognises the "inherent dignity and equal and inalienable rights of all members of the human family."[86] Various sections of this Convention guarantee and protect the rights of a woman within the family.

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[82] Ibid. at 42 - 43

[83] Ibid.

[84] Supra note 30 at 68.

[85] Ibid.

Article 1 states "All human beings are born free and equal in dignity and rights."[87] This emphasizes the equality accorded to every individual, without any qualification. Member states ought to reflect this in the practical application of national laws. The new policies which remain in the process of being passed into law in Nigeria, will only reflect the contents of this provision when all the discriminatory laws present in statute are reformed.

Article 2 extinguishes all forms of discrimination in the application of the provisions under the Declaration. It states that

> " Everyone is entitled to all the rights and freedoms set forth in this declaration, without distinction of any kind, such as race, colour, sex, language, religion, political or other opinion, national or social origin, property, birth or other status."[88]

Nigeria has implemented these standards in her laws although they conflict with other discriminatory laws, since the superiority of the laws that protect women's rights are not in question.

CEDAW enjoins state parties to eliminate discrimination against women in order for them to fully "enjoy their civil, political, economic, social and cultural rights."[89] The United Nations General Assembly adopted this Convention on the 18 December 1979 and it became an international treaty on 3 September 1981.[90] Presently over 120 countries have ratified this convention.[91] Nigeria being a state party to the Convention ratified it on the 13th June 1985, without any reservations.[92] Basically, the aim of this Convention is to ensure the equal treatment of men and women and to further eliminate gender discrimination and ensure the realization of the fundamental human rights of women against specific forms of violence including domestic violence.[93] The spirit of the Convention is rooted in the goals of the United Nations, which are to "reaffirm faith in fundamental human rights, in the dignity and worth of the human person, and in the equal rights of men and women."[94] CEDAW spells out the meaning of equality and how to achieve it. This Convention establishes not only an international bill of rights for women, but also an agenda for action by countries to guarantee the enjoyments of these rights. The Convention also aims at enlarging the understanding of human rights as it gives formal recognition to the influence of culture and tradition on restricting women's enjoyment of their fundamental rights. It also recognizes that stereotypes, customs and norms, lead to numerous legal, political and economic constraints on the advancement of women. The preamble acknowledges that extensive discrimination against women continues to exist and adds that such discrimination "violates the principles of equity of rights and respect for human dignity."[95] The preamble also emphasizes the traditional mode of gender stratification in the society needs to be changed in order to guarantee equality between men and women.[96] State parties have the responsibility to work towards the "modification of social and cultural patterns of individual conduct, so as to eliminate prejudice and customary and other practices, that rest on the idea of the inferiority or superiority of either sex or on stereotyped roles of men and women."[97]

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[86] Universal Declaration of Human Rights, Online: <http://www.un.org/Overview/rights.html> (date accessed: 21 October 2002)

[87] Ibid

[88] Ibid.

[89] Supra note 51

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[90] The Convention on the Elimination of All Forms of Discrimination Against Women, Online: <http://www.un.org/womenwatch/daw/cedaw/frame.htm> (date accessed: 21 October 2001).

[91] Ibid.

[92] "Status of Ratification of the Principal International Human Rights Treaties" (Office of the United Nations High Commissioner for Human Rights) online: (last date Modified 8 February 2002) (date accessed: 16 March 2002).

[93] Supra note 90.

[94] Ibid.

The Convention further tries to unify the roles of men and women in the society, in the recognition of the equality status that the convention advocates. This Convention has ultimately given women authority to challenge gender discrimination. It further enjoins state parties to formulate policies to eradicate all forms of discrimination against women.[98] The convention also provides for equal rights between husband and wife during marriage.[99]

Nigeria's ratification of this Convention creates an implied commitment by the state to condemn discrimination against women in all its forms. By agreeing to pursue by all appropriate means, and without delay, a policy of eliminating discrimination against women. Nigeria has an obligation to address the particular nature of such discrimination.

The *Declaration on the Elimination of Violence Against Women* defines violence against women as:

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[95] Ibid.

[96] Ibid.

[97] Ibid. at Article 5.

[98] Ibid. at Article 2.

[99] Ibid. at Article 16.

> "Any act of gender-based violence that results in, or is likely to result in physical, sexual or psychological harm or suffering to women, including threats of such acts, coercion or arbitrary deprivation of liberty, whether occurring in public or in private life."[100]

This Convention in its provisions enjoins state parties to eliminate traditional or customary and religious practices that are violating women's rights, such as the recently adopted Sharia law in Nigeria.[101]

A regional Convention, that is most relevant to this chapter, is the " African Charter on Human and People's Rights." This Charter is of particular application to human rights in Africa, providing the backbone to the protection of human rights there. The Organisation of African Unity (now referred to as African Union [AU]) on the 27th June 1981 adopted the African Charter and entered into force on 21st October 1986 as providing for rights and obligations between member states and between citizens and member states.[102] The Charter is integrated into the African culture, philosophy and social context. Articles 1-8 lists individual rights of types found in human rights documents. Articles 19- 24 state the rights of people. Articles 27 - 29 state the duties of an individual towards his family, community, the state, and the international community. Part 2 states safeguard measures establishing the African Commission on Human and People's Rights and laying down its organisation and procedures. Part 3 deals with matters of ratification and amendment. However, despite recurrent incidence of the violation of women's rights in Africa, especially in the home, the Charter does not expressly provide for specific protection for women in order to safeguard these rights. In this regard, the Charter contrasts with other international conventions that protect women's human rights. Rather than a specific recognition of women's rights, the Charter incorporates them by reference, by stating that:

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[100] Article 1 Declaration on the Elimination of Violence Against Women.

[101] Ibid. at Article 4

[102] African Charter on Human and Peoples Rights, Online:<http://www1.umn.edu/humanrts/instree/z1afchar.htm> (date accessed: 21 October 2002)

> "(1) The Family shall be a natural unit and basis of society. It shall be protected by the state, which shall take care of its physical health and moral.
>
> (3) The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."[103]

This implies that the Charter has acknowledged the existence of such discriminatory acts as stated in these other conventions and enjoins state parties to carry out these provisions. However, a point, ~~which the~~ Charter failed to address, is the application of these other conventions in African countries that are parties to the Charter but have not ratified these other conventions protecting the human rights of women such as CEDAW. Can it be said that by the ratification of the African Charter they have indirectly conceded to, these other conventions as referred to in Article 18 (3), or, alternatively, that the ratification of the African Charter is a mere political strategy without the intent to observe its provisions? or that by ratifying the African Charter, state parties compulsorily have to ratify these women's conventions? This issue is not clear in the Charter. Somalia, Sudan, and Swaziland, are examples of African countries that are yet to ratify the CEDAW and its optional protocol but are state parties to the African Charter.[104] Can it be said that the treaties are not binding on these countries, but the basic principles provided for in the treaties should be a guide for parties in the attainment of rights of women?[105] The African Commission should address these issues for effective implementation of the requirements of the Charter.

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[103] Ibid. at Article 18 (3).

a. Enforcement /Implementation Mechanism of International Women Treaties

The United Nation has employed means to ensure that state parties implement the provisions of various human rights treaties. Some of the treaties provide in their provisions for the establishment of monitoring bodies. State parties have the obligation to submit reports to these bodies on how far the convention's provisions have been complied with in their various countries. The responsibility for the enforcement of treaty provisions rests on ratifying states. The reports of state parties to their various supervisory bodies can only be effective when significant steps are taken on these reports.[106] Authors have contended that the actual operation of the rule of law is necessary for the successful implementation of international human rights law in a member state.[107] An independent judiciary is one of the essential requirements of a state. This guarantees the effective operation of the rule of law. This enables the judiciary to declare state actions that are contrary to both national and international law void.[108]

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[104] Ibid. at 92.

[105] U.O.Umozurike, *The African Charter on Human and People's Rights,* (Netherlands: Kluwer Law International, 1997) at 57.

[106] C.E. Welch, Jr,"Human Rights and African Women: A Comparison of Protection Under Two Major Treaties" (1993) 15 Human Rights Quarterly 549 at 558.

[107] N. Ambe, "A Legal Analysis of The Domestic Enforceability of International Human Rights Law: The Rule of Law Imperative" (1998) 47 U of N.B.L.J. 109 at 121.

The Committee on the Elimination of all forms of Discrimination Against Women was established under CEDAW. It states that:

> "A committee on the Elimination of Discrimination against Women consisting of 23 experts of high moral standing and competence in the field shall be established under the Convention."[109]

This committee ensures that party states carry out the provisions of the Convention.[110] The state parties have a duty to provide a detailed report to the Secretary - General of the United Nation on the process of implementation of the provisions of the Convention and obstacles, which impedes its full implementation.[111] This is directed to the committee for further consideration and recommendation, to assist in the interpretation of the provisions of the Convention.[112] This committee has expressly discussed the issue of violence against women. In 1992, in its General Recommendation 19, the committee enjoined states to ensure that laws be enacted that guarantee the rights of women against gender related violence. [113] The committee further identified that such action alone will not suffice to eliminate the problem of violence against women. The state will also have to embark on a mass public education enlightenment programme to eliminate the prejudices that will hinder the full implementation of these reformed laws and women's equality.[114]

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[108] Ibid. at 124.

[109] Supra note 90 at Article 17 (1).

[110] Ibid. at Article 17 (1).

[111] Ibid. at Article 18 (1).

[112] Ibid.

[113] Supra note 33at 53.

In Nigeria's report to the committee, the government acknowledged the existence of gender discrimination against women in the society, which is also condoned by Nigerian laws.[115] When appraised critically, the report generally reveals that there is an obvious neglect of the issue of women's rights in Nigeria, and that as regards violence against women, Nigeria still has much to do to secure a safer society for Nigerian women.

The African Charter establishes a human rights commission with the basic function of promoting human rights in Africa.[116] State parties can also lodge complaints to it against other party states and the commission reserves the right to resolve the disputes between them.[117] The commission may also consider complaints lodged by individuals but has no direct powers of enforcement, as it is with various human rights commissions established under various international conventions. The national governments which are regarded as the primary enforcement mechanisms to the actualisation of the provisions of these conventions often fail in this responsibility, and further cite the lack of political will and resources as reasons for non-compliance.[118] Most often this results from the discrimination to take women's issues seriously.

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[114] Supra note 58 at Article 24 (f).

[115] "Women's Anti-discrimination Committee Takes Up Report of Nigeria" Press Release WOM/1065, 2 July 1998 Online: <http://www.un.org/News/Press/docs/1998/19980702.wom1065.html> (date accessed: 22 November 2002).

[116] Supra note 102 at Article 45.

[117] Ibid.

[118] Supra note 1.

V. Domestic Implementation of International Conventions As Municipal Laws in Nigeria

Ratification of international women's conventions imposes an obligation on ratifying states to reflect these provisions in their laws.[119] However, domestic implementation tends to pose a lot of difficulty, depending on the respective politics in these states and their lack of adequate resources to provide its full implementation.[120] Some countries have made international law to have a force of authority under their own laws, and it can be applied as municipal law, which can be enforced in the local courts of law. International human rights are enforceable in national courts either directly or to aid in the interpretation of domestic laws.[121]

Nigeria directly adopted the African Charter as a municipal law, and uses the other ratified international instruments as persuasive authorities. It is not until a state has made conventions part of domestic law that it can be obliged to apply them; but they can still influence the interpretations of its laws. Domestic compliance with international human rights agreements cannot be determined solely by how a state party has made them into law; this can be a legal compliance. Practical compliance can be achieved through "government, international institutions, and NGO's, and through citizens."[122]

Treaties form part of international law. If part of municipal law, treaties protecting and maintaining women's rights can be enforced in domestic courts. The mode of implementation of a treaty depends on a state party's constitutional structure and the manner it ratifies treaties.[123] International treaties can be implemented into domestic law in two ways. First, by "general transformation", the treaty becomes part of domestic law when a constitutional provision incorporates it into domestic law.[124] Like all other laws it has to be ratified by legislation.[125] Second, there is "special transformation"; treaties become part of domestic law, by the use of a separate legislation to incorporate it into domestic law.[126] Nigeria practises the "special transformation" method. For a treaty to be part of municipal law applicable in Nigeria's domestic courts, it has to be transferred into local law by legislation validly passed by the National Assembly. The Judiciary can also make use of these ratified conventions either as domestic law or as tools to interpret domestic laws. Justice Niki Tobi applied this in the case of *Mojekwu* v. *Ejikeme,*[127] where the learned justice, *inter alia* utilised the provisions of women's international convention in declaring null and void a native custom that discriminated against women.

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[119] Supra note 63 at 54.

[120] Ibid.

[121] K. Morvai, "Work and Work-related Rights of Women and Girls" in *Bringing International Human Rights Law Home* (United Nations:2000) 79 at 83.

[122] D. Matas, "Domestic Implementation of International Human Rights Agreements" (1987) 4 C.H.R.Y.B. 91 at 100.

Under the 1999 Constitution, implementation of a treaty into domestic law vests with the legislature. It reads:

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[123] E. Moulton, "Domestic Application of International Human Rights" (1990) 54 Sask. Law Review at 34.

[124] A. Brudner, The Domestic Enforcement of International Covenants on Human Rights: A Theoretical Framework" (1985) 35 U of T .L.J 219 at 221.

[125] Ibid.

[126] Ibid.

[127] (2000) 5 N.W.L.R. 402 at 406.

> (1) "No treaty between the federation and any other country shall have the force of law except to the extent to which such treaty has been enacted into law by the National Assembly.
>
> (2) The National Assembly may make laws for the Federation or any part thereof with respect to matters not included in the executive legislative List for the purpose of implementing a treaty."[128]

One of such treaties to be implemented into Nigerian law is the African Charter as the *African Charter on Human and People's Rights (Ratification and Enforcement) Act.*[129] The Charter has the force of law in Nigeria and is to receive full recognition and effect and be applied by all authorities and persons exercising legislative, executive or judicial powers in Nigeria. The African Charter guarantees the "right of appeal to competent national organs to redress the violation of rights recognised by conventions, laws, regulations, and customs in force."[130] Cases can be heard before the local courts based on rights guaranteed in the Charter. Parties can, therefore, enforce their rights guaranteed in the Charter. Judicial decisions have also upheld this position. For example in *Registered Trustees of the Constitutional Rights Project* v. *President of Nigeria*,[131] the Court applied the principle of international law obligations prevailing over the rules of domestic law when incompatible with international law. The Court held that the African Charter, which overrides ouster clauses, preserved its jurisdiction.

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[128] Constitution of the Federal Republic of Nigeria 1999 S. 12 (1) & (2).

[129] Laws of the Federal Republic of Nigeria 1990 vol 1 C. 10.

[130] Supra note 102 at Article 7 (1).

[131] Unreported suit M/102/92, Judgement of 5 May, 1992.

In *General Sanni Abacha and ors.* v. *Chief Gani Fawehinmi,*[132] the applicant Chief Gani Fawehinmi sought a declaration that his arrest and detention by the privies of the respondent and/or the Federal Military Government of Nigeria Constituted a violation of his rights guaranteed under sections 31, 32, and 38 of the 1979 Constitution and Articles 4, 5, 6, and 12 of the African Charter, and was thereby illegal and unconstitutional.[133] The respondents argued, *inter alia*, that "the African Charter of Human and Peoples rights has no legs to stand on under Nigerian law and cannot be enforced as a distinct law and that it is subject to Nigeria's domestic law and ouster decrees."[134] This case came up during one of the successive military regimes in Nigeria. The respondents were therefore contending that the provisions of the Charter are inconsistent with decree No. 107 of 1993: the then grundnorm and a domestic law in Nigeria. Therefore, the court had no jurisdiction to entertain any action relating to the enforcement of the Charter, which was therefore void to the extent of its inconsistency with the decree. The Court held that

> "before the enactment of an international treaty into law by the National Assembly, it has no force of law as to make its provisions justiciable in Nigerian courts. Upon ratification, the provisions of a treaty binds Nigeria. Its provisions are not justiciable until the treaty has been adopted into Nigeria's municipal law. It has to be enacted into law by the National Assembly as was done with the African Charter and incorporated into municipal law, before it becomes binding. Hence the courts must give effect to it like any other domestic law falling within the judicial powers of the

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[132] [2000] S. C. No. SC 45/1997 (Unreported).

[133] Ibid.

[134] Ibid.

Court." [135]

By this, the African Charter has become part of Nigerian law, and the courts have a duty to enforce it like any other law in Nigeria.

The Court particularly held that "the African Charter is a statute with international flavour; and by this, it is presumed that the legislature does not intend to breach international obligation."[136] Therefore, the Charter possesses " a greater vigour and strength" than any other domestic statute, though it is not superior to the constitution.[137] The rights provided in the Charter are also enshrined in the Constitution.

In *Chima Ubani* v. *Director of State Security Services & Attorney General of the Federation,*[138] the Court of Appeal held, *inter alia* that "the African Charter is superior to all municipal laws in Nigeria, including the decrees of the military governments."[139]

These decisions have given the Charter a superior status to other Nigerian municipal laws, but not to the Constitution. The African Charter is, therefore, in force in Nigeria. These cases have further settled the validity and enforcement of the African Charter, an international or regional convention, ratified as Nigerian municipal law, having the force of law in Nigeria. To this extent, the provisions of the Charter including Article 18, which incorporates other international conventions protecting the rights of women by reference, binds the Nigerian government. As it states expressly:

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[135] Ibid.

[136] Ibid.

[137] Ibid.

[138] Unreported C. A. Lagos CA/L/260/96 7 July 1999.

[139] Ibid.

> "The state shall ensure the elimination of every discrimination against women and also ensure the protection of the rights of the woman and the child as stipulated in international declarations and conventions."[140]

Under the law of treaties,

> " A state is obliged to refrain from acts which would defeat the object and purpose of a treaty when:
>
> (a) it has signed the treaty or has exchanged instruments constituting the treaty subject to ratification, acceptance or approval, until it has made its intention clear not to become a party to the treaty or
>
> (b) it has expressed its content to be bound by the treaty, pending the entry into force of the treaty and provided that such entry into force is not unduly delayed."[141]

By this the Nigerian government is bound by the provisions of international conventions that protect and maintain the rights of women and, has by the "special transformation" of the African Charter into municipal law, adopted these international conventions into her laws.

Nigeria has sufficient national and international laws that a battered woman can utilise in seeking protection and redress against her batterer. The most visible problem is the lack of enforcement of these rights by the victims. The lack of adequate prosecution of these crimes also contributes to the lack of enthusiastic will in victims to report such crimes. An analysis of this problem in so far has revealed that Nigeria does not have any problems with its laws, apart from the obvious laws that condone spousal battery. These laws as analysed above in Chapter Two, are unconstitutional and they undisputedly cannot stand in the face of the

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[140] Supra note 100 at Article 18 (3).

[141] Supra note 78 at Article 18.

Constitution. Victims of spousal battery can make use of various provisions in the Constitution to question the validity of laws that condone spousal battery in Nigeria. Ultimately, due to their unconstitutionality, they can be reformed or totally abolished from Nigerian statutes. Such is the case with the Sharia law in Nigeria. Due to its obvious unconstitutionality, and its constant violation of rights especially those of women, the Federal Government has finally declared it unconstitutional, although this awaits judicial pronouncement. Apart from these laws, as we have seen above, there are other laws that protect victims and that these victims can use to challenge the unconstitutionality of discriminatory laws.

The root problem of domestic violence in Nigeria is not legal. The society generally lacks the basic knowledge of what constitutes violence against women. Evidently, the lack of resources, including human resources, to deal with this issue contributes to its ineffective prosecution. Another basic defect is the lack of training of personnel, especially law enforcement agents, on how to prosecute this issue particularly as it affects women. According to the statistics presented in Chapter One, the rate of this crime is fast increasing in Nigeria, as it is globally. Various countries are seeking solutions in order to reduce the incidence of family violence in their communities. The Nigerian government can explore opportunities to deal with this issue by learning how other countries are dealing with it.

Various Canadian Provincial Governments have sought adequate means to effectively deal with this problem. The next chapter addresses Canadian practices as a suggested option for reform in Nigeria.

CHAPTER 4

COMMUNITY RESPONSE TO DOMESTIC VIOLENCE: AN OPTION FOR REFORM IN NIGERIA

I. Introduction

Spousal battering is also a fundamental issue and crime against women in Canada.[1] According to the statistical profile released by Statistics Canada in 1996, approximately "22,000 incidents of spousal assault were recorded, of which 89% involved female victims while 11% were male victims."[2] This crime too often degenerates to more tragic crimes such as homicide. In Canada between "1977 -1996, 1,525 wives were murdered by their husbands, as opposed to 513 husbands murdered by their wives."[3]

Various Canadian provincial governments, in an effort to eradicate this problem from the society, enacted provincial legislation that basically uses the civil approach and remedies to prosecute this crime. In Canada, the Constitution divides the power of lawmaking between the federal and provincial governments. The Federal Government has exclusive power to "develop criminal law, (except the Constitution of Courts of Criminal jurisdiction) to decide if behaviour is criminal and to determine criminal procedure."[4] The Provincial Government is responsible for the administration of justice within the province, thereby ultimately enforcing criminal law. It has jurisdiction over "property and civil rights in the province, which include power to legislate in relation to family -law- related matters such as matrimonial property, child and spousal support, and custody."[5] In other words, the provincial government cannot deal with domestic violence in terms of criminal sanctions but can impose penal sanctions for violation of provincial orders. Despite the existence of these laws, spousal battering still exists in Canada. The operation of law in a society as an instrument to deter crime has certain limits. It can enforce certain behaviour in the society to conform to the laid down rules, but has no capacity to change human behavioural pattern.[6] For this reason, crimes are still committed, despite the existence of express laws sufficient to prohibit criminal acts or omission. Victims sometimes refer to this phenomenon to express their distrust in the criminal justice system and its agents. Communities that record a high rate of domestic violence incur a lot of financial and social expenses, which includes increased health care, security, and loss of productivity.[7] This leads to a gradual destruction of the community. Communities have been and are in the process of addressing the effects of domestic violence. They are also devoting human energy and financial resources to stopping this crime. This process normally takes an integrated multi-disciplinary approach, which addresses needs of the victims, batterers and children.

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[1] Law Reform Commission of Nova Scotia, Final Report From Rhetoric to Reality: Ending Domestic Violence in Nova Scotia , February 1995.

[2] Statistics Canada: Canadian Centre for Justice Statistics, Family Violence in Canada: A Statistical Profile 1998 at 6.

[3] *Ibid.*

[4] S. 91(27) Canadian Constitution Act 1867.

The problem of spousal battery experienced in Canada is similar to the Nigerian situation. The only difference is the socio-cultural stereotype, which particularly affects this issue in Nigeria. Both countries have laws that women can use against spousal battery, yet statistics still record a high incidence of this crime, the only difference being that Canada has taken practical initiatives to end this crime in the society. [8] The provincial governments in Canada have gone further in addressing the issue of spousal violence in various communities within their provinces. One of such provinces is Alberta. Our focus will be on the initiative carried out in the City of Edmonton. The City of Edmonton established the safer cities initiatives with the Edmonton Police Service and Edmonton Community and Family Services. One of the initiatives created in order to end spousal violence in the community is the Spousal Violence Intervention Team. This chapter will examine the history, purpose and objective of this programme. The process of crisis intervention and the requisite education and training for police officers will also be examined. The goal here is to examine the adequacy of a communal response to spousal battery. This programme will be utilised as one of the suggested options for reform in Nigeria. The adoption of this model will provide for a closely interactive and practical method of ending spousal battery in Nigerian communities. This will further improve public understanding of spousal battery and will offer suggestions on how the community can help in reducing this crime with the ultimate goal of breaking the cycle of violence in the communities and create a safer city for Nigerians.

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[5] S. 92 (13) Canadian Constitution Act 1867.

[6] *Supra* note 1 at 3.

[7] Safer Cities Initiatives: Edmonton Police Service and Community Family Services, Family Violence: Follow-up Team Demonstration Project, Research Report and Findings, February 1994.

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[8] In a recent Statistics Canada survey on violence against women, "51% of all Canadian women reported experiencing at least one incident of physical or sexual violence since age 16; 29% of women who had ever been married or lived in common law had experienced spousal violence; of these, one in six of those currently and 50% of those previously married or living common law reported spousal violence". (Family Violence in Canada: A Statistical Profile 1998). In Nigeria, despite the lack of adequate data on spousal abuse, studies on spousal violence have been carried out in different parts of the country. In Benin city (Edo State), the cases reported to the welfare office revealed an increase in physical violence in spousal relationships between 1982 - 1988.

II. Edmonton Safer City Initiative

Individuals from various government departments and NGO's met to address the need of keeping a safe community.[9] The proposal from this meeting led to the development of the Mayor's Task Force on Safer Cities on the 28th June 1990, chaired by Mayor Jan Reimer and 15 citizens.[10] It was formed to combat crime through "social development."[11] Upon the first report of this task force in 1992, the city council created the Safer Cities Initiatives Office to oversee the implementation of the report's recommendations. Amongst many of programs initiated is the Family Violence Follow up Team, now called the Spousal Violence Intervention Team.[12] It shall be the major focus of this chapter.

III. Edmonton Spousal Violence Intervention Team

This is a joint venture of the Edmonton Community Service and the Edmonton Police Services, established to address incidents of spousal violence within the community.[13] Each team consists of a detective and a senior social worker. Cases of spousal battery, which the unit handles, are often identified through police investigation and basically they ensure that adequate and quality services are given to victims and perpetrators.[14]

A spousal violence intervention team is assigned to each of the North, South, Downtown and West, police divisions in Edmonton. The primary goal of a team is to adequately deal with the issue of spousal abuse.

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[9] *Supra* note 7 at 1.1.

[10] *Ibid.*

[11] *Ibid.*

[12] *Ibid.* at 1.2

[13] *Ibid.*

[14] *Ibid.*

> The objectives of each team include:
>
> (i) "Working to eradicate the incidence of spousal abuse in Edmonton.
>
> (ii) Identifying cases in which victims are subject to high risk and initiating follow up contact.
>
> (iii) Providing various services to victims and perpetrators, including counselling, referrals to social agencies, to child welfare in case of child abuse and neglect etc.
>
> (iv) Initiating an environment of safety for clients.
>
> (v) Providing prompt police response in cases of abuse.
>
> (vi) Educating the community about spousal abuse, in order to develop increased understanding of the community and also to encourage cases of spousal abuse to be reported."[15]

A distress call leads to police intervention. Some cases are referred to the team by social agencies, such as battered women shelters. However, approximately, 95% of the cases handled by the teams arose from police reports.[16] This is also due to the fact that access to this service is primarily by police referral due to the volume of cases envisaged, if it were open to the public. The team has established screening criteria. The team identifies high and low risk cases. The high-risk cases includes immigrant women (due to cultural factors in which most women are subservient to the men and this leads to a high level of tolerance of the crime), victim trauma, risk to victim and children, history of abuse and pregnant women. The low risk cases arise from fights involving spouses who are drunk. The team base their prioritization of cases upon these and many other criteria. However, from experience it was stated that the "willingness of victims to accept assistance" was the most significant factor used as a criterion.[17] Some victims for one reason or another will prefer to decline any further assistance perhaps because of lack of trust in the justice system, fear of her abuser, or the shame of exposing intimate marital affairs to the public.

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[15] *Supra* note 7 at 2.1

[16] *Ibid.* at 2.5.

While either the detective and the senior social worker can make the initial contact, they each have clearly defined duties and responsibilities.[18] The detective's responsibilities include, making immediate arrest if the situation warrants this and giving options of protection to the victim, (the social worker can also give out this information in the absence of the detective).[19] The social worker, by comparison, provides a more personalised service to the victim by providing home visits to assess the situation and further provides counselling and crisis intervention services.[20] Ideally, at the start, before the team is called in, what usually obtains is that two police officers normally intervene. The officers must ensure that the spouses are taken to either side of the venue of dispute, in order to avoid contact with each other. Upon investigation, if the officers deem it necessary, an arrest is made upon reasonable evidence that harm has been done to the victim. The officers then lay a criminal charge against the offender. Where there is no evidence of any injuries but the officers reasonably suspect that there is an impending danger to the victim they can still charge the offender. This is in tune with the provision of the Canadian Criminal Code it states:

> "A peace officer may arrest a person who ... on reasonable grounds, he

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[17] *Ibid.* 2.6

[18] *Ibid.*

[19] *Ibid.*

[20] *Ibid.*

> believes ... is about to commit an indictable offence."[21]

The police officers must act with care in order to work within the confines of the law to avoid an unlawful arrest. In all these situations the officers still need to make a report. This is given to the Spousal Violence Intervention Team.

The teams, then, contacts the victim either by telephone or by an arranged visit. They provide the necessary moral and emotional support in order to get the victim through the criminal process. The victim is not left alone at court hearings: at least one member of the team takes her there and sits with her in court. Where necessary, different support agencies are contacted to provide counselling, rehabilitation, or even a safe home for the victim. Where the victim decides to procure a protection order, the team also helps her in securing this, in order to ensure her safety.

However, there are occasions where the victim decides she does not want to lay a criminal charge. Where the officers, upon further investigation find evidence of assault, they normally institute a criminal charge even where the victim decides otherwise. In cases where a criminal charge is not laid against the offender for one reason or another, the victim has the option to do this herself. She can press charges for criminal assault by laying a private complaint in the Provincial Court Criminal Trial Division.

Within 24 hours of arrest, the offender, has a right to bail. The Justice of the Peace or the Judge has a right to determine whether the offender is eligible for bail, so as not to jeopardise the safety of the victim. Upon release, restrictions can be placed upon the offender, if there is reason to believe that the victim is in impending danger. In cases where the offender is charged with assault and found guilty of this offence, he will be sentenced. The nature of the sentence will depend on several factors such as, a prior criminal record. The offender can be sentenced to jail terms, fines or probation. It is usually the case that most abusers pose a threat to the victims upon their release from jail. Where the abuser is given less than a two-year sentence, there is usually a probation period of 1-3 years to which conditions of release are attached. These normally include no contact with the victim. For a sentence of more than two years, a parole board gives conditions for release. Where the abuser still breaks all these conditions, there is a new investigation, and a new criminal charge against the abuser.

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[21] Canadian Criminal Code, R.S., c. C-34, S. 495.

Of paramount concern in these services offered by the team to the victim, is the safety of the victim.[22] The team considers this in assessing the situation and making out options for a safety plan.[23] It is important to note that the team members never tell the victim what step to take; rather, she is counselled and given various options after which she decides on her probable line of action. The team, then, assist her in this and guide her through her choice.

IV. Legal Options Available to a Victim of Spousal Abuse

a. Laying a Criminal Charge for Assault

The police officers at the scene of the crime have the duty to charge the offender based on the evidence obtained from the investigation. However, in a situation where no charges are laid, the victim can do this on her own. The victim goes to the Provincial Court - Criminal Trial Division and registers her complaint. An appointment is set with the Justice of the Peace. The Justice of the Peace decides whether there are reasonable grounds to lay a charge. Upon a positive decision, the complaint is sent to the Crown Prosecutor, who decides whether there are sufficient evidence to lay charges, and if so, the matter proceeds to trial. Recently in Alberta, the Office of the Crown Prosecutor now has two prosecutors who basically handle spousal abuse cases.

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[22] *Supra* note 7 at 2.7

[23] *Ibid.*

Most women will rather not opt for a criminal charge. This can be attributed to their financial dependence on the offender. There are other several options that can be utilised to protect the victims.

b. Restraining Orders

This order is issued in a civil court and requires the assistance of a lawyer. This order can be attached to other actions such as a divorce or a civil action in tort.[24] This form of action is usually expensive for the victim due to the cost of hiring of a counsel. Furthermore, a breach of this order is also at the expense of the applicant since the applicant has to pay her lawyer to represent her any time the abuser breaches any condition contained in the order. On the part of the respondent, a breach of any of the conditions contained in the order is a civil contempt.[25]The Protection and Restraining Order Project (PROP) provides assistance to victims, by obtaining restraining orders for victims who cannot afford the services of a lawyer. The restraining order can also cover people other than the victim, including the victim's children, relatives and other people related to the victim whom the offender has threatened.[26]

The restraining order is not valid until it is served on the offender. However, it can be obtained *ex parte*, where the victim shows due cause that her safety can be compromised by further delay. This order is usually valid for 3 months.[27] Upon its expiration, action must be taken to secure the safety of the applicant.[28] Such action may include another restraining order.

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[24] Alberta Law Reform Institute, *Domestic Abuse: Toward An Effective Legal Response* June 1995 at 14.

[25] Rule 703 Alberta Rules of Court.

[26] *Supra* note 24 at 15.

c. Peace Bonds

This is a court order that requires the offender to keep the peace and obey such further conditions as laid down by the court. Unlike the restraining order this order is issued in a criminal court and is free. The applicant or a representative of the applicant can bring the application before the Justice of the Peace and give reasons why she fears on reasonable grounds for her safety and the safety of her property.[29] The Justice of the Peace, then, conducts a hearing and if there are reasonable grounds to confirm the fears of the applicant, the Justice of the Peace can either:

> (i) "Order the defendant to enter into recognisance... to keep the peace and be of good behaviour for a year or
>
> (ii) sentence him to prison for a term not exceeding 12 months upon failure to enter into the recognizance."[30]

d. Recognizance Order

When a defendant makes an application for bail, the Judge or Justice of the Peace usually issues a recognizance order, which provided conditions, which the defendant must abide by for granting his release.[31] In contrast to a restraining order this order is free and is issued in a criminal court.

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[27] *Ibid* at 18.

[28] *Ibid.*

[29] *Supra* note 21 at S.810 (1).

[30] *Ibid.* at S. 810 (3).

e. Emergency Protection Order

The nature of this order suggests urgency. The applicant makes an application without notice to the respondent before a provincial court Judge or a designated Justice of the Peace. This order may be granted if the Judge or Justice determines

> (i) "That family violence has occurred, and
> (ii) That, by reason of seriousness or urgency, the order should be granted to ensure the immediate protection of the claimant."[32]

There are certain criteria that the Judge or Justice of the Peace may consider in granting this application, including:

> (a) "The nature of the family violence.
> (b) The history of family violence by the respondent towards the claimant.
> (c) The existence of any immediate danger to persons or property.
> (d) The best interest of the claimant and any child of the claimant or any child who is in care and custody of the claimant."[33]

This order is easily accessible to the victims since it incurs no cost.

f. Exclusive Possession of Matrimonial Home.

As regards married spouses, the victim can get an exclusive possession order over the matrimonial home, under the *Matrimonial Property Act*.[34] This application is usually made with notice to the respondent. There are cases where if there appears to be immediate threat of violence, the court may make an order *ex parte*. The court can either:

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[31] *Supra* note 7 at 2.7

[32] Protection Against Family Violence Act S.A. 1998, c. P-19.2, S.2(1).

[33] *Ibid.*

[34] R.S.A., 1980, c. M-9.

(a) "Direct that a spouse be given exclusive possession of the matrimonial home

(b) Direct that a spouse be evicted from the matrimonial home

(c) Restrain the spouse from entering or attending at or near the matrimonial home."[35]

However, in making this orders the court considers some necessary factors such as

(i) " The availability of other accommodation within the means of both spouses.

(ii) The needs of any children residing in the matrimonial home.

(iii) The financial position of each of the spouses.

(iv) Any order made by a court with respect to the property or maintenance of one or both spouses."[36]

g. Civil Actions

The victim can sue the offender for a civil action for assault. This action can be used as a form of compensation to the victim . The services of a lawyer will be required.

All these are the various orders used to ensure the safety of the victim and her children. The offender is not isolated from the services of the team. Services such as counselling can be provided to the offender. The detectives are careful in their approach since information given by offenders can also be used against them in criminal charges.[37] Offenders are usually advised to enrol in counselling courses; in order to obtain the necessary help required to deal with violent behaviour.[38] It was recommended by the team that, mandatory counselling should be used in the sentencing procedure.[39] Some of the services provided are not affordable for the batterers, due to lack of financial security, since some are unemployed.[40] This factor further reduces their enthusiasm to enrol for counselling courses.[41] Also, the positive effects on the offenders are usually short lived since the period is short term and not sufficient to have a positive influence on the behaviour of a man who has been abusing his spouse for several years.[42]

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[35] *Ibid.* at S. 19 (1).

[36] *Ibid.* at S. 20.

[37] *Supra* note 7 at 2.9.

In the case of alcohol abuse, offenders are often referred to rehabilitation centres where they can obtain the necessary help to get over their addiction.

The spousal violence intervention team also embarks on education awareness programs in the community. Presentations are given in educational institutions, and to religious and cultural groups. This is usually done to raise awareness of spousal abuse and of the services offered to victims and batterers.

V. Training of Police Officers

The Edmonton Police Service organises several training programmes every year for its officers. This training addresses issues which include child abuse, sexual abuse and family violence. The content of these programmes changes from time to time depending on the instructor giving the course. This is a prerequisite that a police officer must take before joining the spousal violence intervention team. In addition to this, new police recruits are educated on spousal abuse and receive the opportunity to train with experienced police officers on crisis intervention. Members of the team educated police officers daily on the issue of spousal abuse, which they may encounter, giving the police officers an opportunity to share experiences they routinely encounter and seek modes to provide better intervention models.[43] The goal being to educate them on their paramount objective, which is the safety of the victim.

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[38] *Ibid.*

[39] *Ibid.*

[40] *Ibid.*

[41] *Ibid.*

[42] *Ibid.* at 2.10

At the conclusion of the criminal trial or a civil suit, the team still follows up the spouses, to know the progress being made and to maintain contact with them. They concluded that some situations saw a reduction in the abuse, while some victims separated from the batterers even after treatment.[44] On the whole, this team has been successful in meeting the needs of the community. The spousal violence intervention team since its initiation has recorded a vast amount of success in breaking the cycle of violence in the communities. The project study of this team carried out in 1994 concluded that "94% of victims with whom the follow up teams worked with felt they had benefited from the social work contact, and 88% felt this way about the police contact."[45] The project study concluded that police and social workers both complement each others work, to make up a team.[46]

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[43] *Ibid.* at 2.11

[44] *Ibid.*

[45] *Supra* note 7.

[46] *Ibid.*

A similar programme was developed in Phoenix Arizona. Domestic violence was received a coordinated community response, through the creation of local coordinating councils. Each council has the responsibility of making suggestions on how to address domestic violence through a coordinated multi-disciplinary community response.[47] By this, Arizona has enacted specific legislative laws to address domestic violence crimes, and further offer adequate protection to victims.[48]

Community response creates an avenue for a more personal and integrated manner of combatting domestic violence related crimes. This obviously has a significant impact in addressing spousal battery in the society.

VI. Suggested Reforms In Nigeria

The socio-cultural environment has to be taken into consideration, given the cultural diversity and cultural difference between Canada and Nigeria. The objective of this part of the chapter is to offer practical suggestions on addressing spousal battery.

Laws that condone spousal battery in Nigeria need to be reformed. Nigeria has a Law Reform Commission. Its basic responsibility is to make proposals to the government about areas of law that need to be amended, such as obsolete laws that do not accord with the present state of affairs. Laws that discriminate against women are still very much in existence in Nigeria but, as observed above in Chapter Two, cannot stand in the face of the Nigerian Constitution.

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[47] "Model Guide for Developing Local Coordinating Councils on Domestic Violence" *Proceedings of 27th Annual Conference of National Organisation for Victim Assistance Held August 19 - 24, 2001* (Maricopa Association of Governments, August 2002).

[48] *Ibid.*

Many NGO's in Nigeria address the degenerating rights of women in the family, especially their rights against spousal battery. These NGO's account for the many changes aimed towards the elimination of domestic violence in Nigeria. These NGO's include Project Alert against Violence against Women, the Legal Research and Development Centre, and the Civil Liberties Organisation. These organisations also carry out public education enlightenment programmes by such means as seminars, posters, and public forums.

One suggested reform involves a more closely monitored project aimed at eliminating spousal battery in the community. One or more NGO's can come together to create a committee to address spousal battery in the community. A district should be chosen, by criteria that should include a high incidence cases of spousal battery reported to police, the rate of crime associated with it and high risk factors such as the threat to victims and children. Influential members of the community should also be invited to join this committee, such as traditional rulers, police officers, teachers, lawyers, and philanthropists. Arizona adopted this model in selecting core members of the local councils, so as to have a multi-disciplinary approach to addressing domestic violence in the community. The nature of spousal abuse in this community should also be analysed through data, with the objective of revealing the reasons for abuse, the vulnerable people in the community, and the most victimised. For the nature of the problem has to be identified before adequate solutions can be tendered. The needs of the women should be specifically attended to, through public fora. The fora should never be gender restricted: if this were done, some men would discourage their wives from attending, regarding the fora as usurping their much-guarded authority and power, and displacing their role in the family. In order to attract women, their needs should be targeted and provided for as much as possible . The nature of these educational fora should not be accusatory or finger pointing rather, a reconciliatory approach should be adopted and thus further address the need for peace and love in the home for a safer community. Individual counselling can be made with families. A team selected from the committee and with the requisite expertise to counsel abused spouses can provide counselling services to these families. The goal is to build trust between these families and the team members. The local traditional ruler can also make up this team. This is of particular significance in those traditional communities in Nigeria where disputes come before the traditional ruler, who mediates between the parties. This will make the victim more comfortable and further heighten the trust between the team members and the victim. The model of the Edmonton spousal violence intervention team will be effective here. A specialised unit can be created in the community police station specifically to deal with family violence. This unit can be made up of two experienced police officers, preferably a male and a female, and a social worker[49] or alternatively, an NGO member. Every case handled by the community team members should be reported to this unit, and a follow up carried out by the team from the community. The team members will work in conjunction with the unit members in order to build an effective response to spousal battery in the community.

Other modes of seeking redress for the victim should be examined, besides sentencing the offender. Court orders such as probation, possession of matrimonial home and fines can be utilised. In cases of spousal abuse, the object of sentencing is deterrence and rehabilitation of the offender. Jail terms will not deter this abuse in that the victim can suffer further abuse when the offender is released. Also, victims who are dependent of the offender will have no one to provide for the family when the offender is incarcerated.

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[49] This position is not common in Nigeria, this can be replaced with a member of an NGO which specifically advocates against spousal battery.

The option of community response to spousal battery will encourage victims to report this crime and they will in turn be guaranteed of a justified response. Ultimately, the record of spousal battery in this district will be reduced. Upon a record of success, this project can then be initiated in other districts. This will create public awareness, and sponsors will be introduced for this project. The State government can then be involved, to be an avenue to introduce laws that protect women against spousal battery. This achievement can then be introduced across the state, into other states and, ultimately, into the whole nation.

For this system to be adequately in place, several structures need to be established for it to achieve great success, such as community shelters. The community will require a shelter to provide a safe environment for the victim and her children, pending the resolution of the situation. Sponsors can help. As in Edmonton, the location of such shelters are not made public, so as not to enable the batterer gain access to the victim and her children and cause further harm to them and the staff of the shelter.

The batterers should not be isolated from treatment offered by the team members, as services should be open to both spouses. Agencies should be established for these treatments to be carried out.

Of great importance to the success of this programme is the training of the special unit in the police station to handle such cases. The officers have to learn how to be more responsive and sensitive to spousal abuse cases. This can be integrated into the police colleges as a core course in order to familiarise the officers to this concept, since this crime has its particularities , such as the emotional attachment between the parties. Experts in this field can be invited to conduct intensive training for police officers in the areas of child abuse, spousal violence and sexual abuse.

Money is an issue, as such a project appears to be capital intensive. Corporate, religious and government sponsors can be approached to provide financial assistance to meet the needs of the parties. Some of the victims will need legal counsel. For those who cannot afford this, Legal Aid provides free services and covers the cost of hiring a lawyer.

The nature of this suggested reform is reconciliatory rather than punitive. The Nigerian environment itself in gender discriminatory in several aspects of the society. Most men are in positions of authority and decision making. Spousal battery itself is a very controversial issue in Nigeria since men see it as their god-given right to chastise their wives. There is a need to further educate both men and women on this issue. The initial step towards a practical solution to this problem is not to punish. Once society accepts these suggested steps, further solutions can be sought. This reconciliatory and deliberate approach appears to be a more practical way to address spousal battery in the community than retribution. From the cases in Edmonton and Arizona, a community response will be more effective towards providing suitable remedies for the victim and treatment for both spouses. A community-based action will allow and encourage men to redefine their relationships with women, and a social and legal change will empower and enable women to live independently of abusive men.

CONCLUSION

This research has analysed the issue of spousal battery in Nigeria and suggested practical solutions to remedy the situation in Nigeria. Basically, the perception of the issue is the beginning of the problem. As identified above, some men will perceive this reform as a challenge to their authority and a probe into their marital affairs. The question here is, can there be an express law against spousal abuse that would be effective in Nigeria now? This cannot be answered definitely. Still, regarding the state of affairs in Nigeria today, there is a limit to which laws can help. Laws cannot change human perception but can only serve as a source to guide and incur orderly behaviour in the society. A legal solution is therefore not the answer. It can come after other solutions have been explored. A positive change in the rate of crime arising from spousal battery will encourage the enactment of laws to protect victims of this crime.

As examined above, countries have gone beyond the law, to a more practical approach to spousal abuse. The City of Edmonton has recorded success over spousal abuse through a coordinated community response to it. Arizona has used this approach to bring positive changes to its laws and has revised its statutes to integrate laws against domestic violence, which offers adequate protection to victims. Nigeria can explore this option. When the Nigerian government realises the success recorded in this project, it will get involved.

Obviously there will be mixed reactions to this step in Nigeria but if nothing is done about it, it will further heighten the rate of crime in the family. The family is the unit of socialisation. A dysfunctional family can sometimes produce dysfunctional individuals, and, ultimately will affect the whole nation even more than spousal abuse affects Nigeria at present.

Nigeria can start now to look into this alternative means of ending spousal violence as other countries have done and create a safer nation for the future of all Nigerians.

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APPENDIX

Constitution of the Federal Republic of Nigeria 1999

Chapter IV

Fundamental Rights

33. (1) Every person has a right to life, and no one shall be deprived intentionally of his life, save in execution of the sentence of a court in respect of a criminal offence of which he has been found guilty in Nigeria.

(2) A person shall not be regarded as having been deprived of his life in contravention of this section, if he dies as a result of the use, to such extent and in such circumstances as are permitted by law, of such force as is reasonably necessary -

(a) for the defence of any person from unlawful violence or for the defence of property:

(b) in order to effect a lawful arrest or to prevent the escape of a person lawfully detained; or

(c) for the purpose of suppressing a riot, insurrection or mutiny.

34. (1) Every individual is entitled to respect for the dignity of his person, and accordingly -

(a) no person shall be subject to torture or to inhuman or degrading treatment;

(b) no person shall he held in slavery or servitude; and

(c) no person shall be required to perform forced of compulsory labour.

(2) for the purposes of subsection (1) (c) of this section, "forced or compulsory labour" does not include -

(a) any labour required in consequence of the sentence or order of a court;

(b) any labour required of members of the armed forces of the Federation or the Nigeria Police Force in pursuance of their duties as such;

(c) in the case of persons who have conscientious objections to service in the armed forces of the Federation, any labour required instead of such service;

(d) any labour required which is reasonably necessary in the event of any emergency or calamity threatening the life or well-being of the community; or

(e) any labour or service that forms part of -

(i) normal communal or other civic obligations of the well-being of the community.

(ii) such compulsory national service in the armed forces of the Federation as may be prescribed by an Act of the National Assembly, or

(iii) such compulsory national service which forms part of the education and training of citizens of Nigeria as may be prescribed by an Act of the National Assembly.

35. (1) Every person shall be entitled to his personal liberty and no person shall be deprived of such liberty save in the following cases and in accordance with a procedure permitted by law -

(a) in execution of the sentence or order of a court in respect of a criminal offence of which he has been found guilty;

(b) by reason of his failure to comply with the order of a court or in order to secure the fulfilment of any obligation imposed upon him by law;

(c) for the purpose of bringing him before a court in execution of the order of a court or upon reasonable suspicion of his having committed a criminal offence, or to such extent as may be reasonably necessary to prevent his committing a criminal offence;

(d) in the case of a person who has not attained the age of eighteen years for the purpose of his education or welfare;

(e) in the case of persons suffering from infectious or contagious disease, persons of unsound mind, persons addicted to drugs or alcohol or vagrants, for the purpose of their care or treatment or the protection of the community; or

(f) for the purpose of preventing the unlawful entry of any person into Nigeria or of effecting the expulsion, extradition or other lawful removal from Nigeria of any person or the taking of proceedings relating thereto:

Provided that a person who is charged with an offence and who has been detained in lawful custody awaiting trial shall not continue to be kept in such detention for a period longer than the maximum period of imprisonment prescribed for the offence.

(2) Any person who is arrested or detained shall have the right to remain silent or avoid answering any question until after consultation with a legal practitioner or any other person of his own choice.

(3) Any person who is arrested or detained shall be informed in writing within twenty-four hours (and in a language that he understands) of the facts and grounds for his arrest or detention.

(4) Any person who is arrested or detained in accordance with subsection (1) (c) of this section shall be brought before a court of law within a reasonable time, and if he is not tried within a period of -

(a) two months from the date of his arrest or detention in the case of a person who is in custody or is not entitled to bail; or

(b) three months from the date of his arrest or detention in the case of a person who has been released on bail, he shall (without prejudice to any further proceedings that may be brought against him) be released either unconditionally or upon such conditions as are reasonably necessary to ensure that he appears for trial at a later date.

(5) In subsection (4) of this section, the expression "a reasonable time" means -

(a) in the case of an arrest or detention in any place where there is a court of competent jurisdiction within a radius of forty kilometres, a period of one day; and

(b) in any other case, a period of two days or such longer period as in the circumstances may be considered by the court to be reasonable.

(6) Any person who is unlawfully arrested or detained shall be entitled to compensation and public apology from the appropriate authority or person; and in this subsection, "the appropriate authority or person" means an authority or person specified by law.

(7) Nothing in this section shall be construed -

(a) in relation to subsection (4) of this section, as applying in the case of a person arrested or detained upon reasonable suspicion of having committed a capital offence; and

(b) as invalidating any law by reason only that it authorises the detention for a period not exceeding three months of a member of the armed forces of the federation or a member of the Nigeria Police Force in execution of a sentence imposed by an officer of the armed forces of the Federation or of the Nigeria police force, in respect of an offence punishable by such detention of which he has been found guilty.

36. (1) In the determination of his civil rights and obligations, including any question or determination by or against any government or authority, a person shall be entitled to a fair hearing within a reasonable time by a court or other tribunal established by law and constituted in such manner as to secure its independence and impartiality.

(2) Without prejudice to the foregoing provisions of this section, a law shall not be invalidated by reason only that it confers on any government or authority power to determine questions arising in the administration of a law that affects or may affect the civil rights and obligations of any person if such law -

(a) provides for an opportunity for the persons whose rights and obligations may be affected to make representations to the administering authority before that authority makes the decision affecting that person; and

(b) contains no provision making the determination of the administering authority final and conclusive.

(3) The proceedings of a court or the proceedings of any tribunal relating to the matters mentioned in subsection (1) of this section (including the announcement of the decisions of the court or tribunal) shall be held in public.

(4) Whenever any person is charged with a criminal offence, he shall, unless the charge is withdrawn, be entitled to a fair hearing in public within a reasonable time by a court or tribunal:

Provided that -

(a) a court or such a tribunal may exclude from its proceedings persons other than the parties thereto or their legal practitioners in the interest of defence, public safety, public order, public morality, the welfare of persons who have not attained the age of eighteen years, the protection of the private lives of the parties or to such extent as it may consider necessary by reason of special circumstances in which publicity would be contrary to the interests of justice;

(b) if in any proceedings before a court or such a tribunal, a Minister of the Government of the Federation or a commissioner of the government of a State satisfies the court or tribunal that it would not be in the public interest for any matter to be publicly disclosed, the court or tribunal shall make arrangements for evidence relating to that matter to be heard in private and shall take such other action as may be necessary or expedient to prevent the disclosure of the matter.

(5) Every person who is charged with a criminal offence shall be presumed to be innocent until he is proved guilty;

Provided that nothing in this section shall invalidate any law by reason only that the law imposes upon any such person the burden of proving particular facts.

(6) Every person who is charged with a criminal offence shall be entitled to -

(a) be informed promptly in the language that he understands and in detail of the nature of the offence;

(b) be given adequate time and facilities for the preparation of his defence;

(c) defend himself in person or by legal practitioners of his own choice;

(d) examine, in person or by his legal practitioners, the witnesses called by the prosecution before any court or tribunal and obtain the attendance and carry out the examination of witnesses to testify on his behalf before the court or tribunal on the same conditions as those applying to the witnesses called by the prosecution; and

(e) have, without payment, the assistance of an interpreter if he cannot understand the language used at the trial of the offence.

(7) When any person is tried for any criminal offence, the court or tribunal shall keep a record of the proceedings and the accused person or any persons authorised by him in that behalf shall be entitled to obtain copies of the judgement in the case within seven days of the conclusion of the case.

(8) No person shall be held to be guilty of a criminal offence on account of any act or omission that did not, at the time it took place, constitute such an offence, and no penalty shall be imposed for any criminal offence heavier than the penalty in force at the time the offence was committed

(9) No person who shows that he has been tried by any court of competent jurisdiction or tribunal for a criminal offence and either convicted or acquitted shall again be tried for that offence or for a criminal offence having the same ingredients as that offence save upon the order of a superior court.

(10) No person who shows that he has been pardoned for a criminal offence shall again be tried for that offence.

(11) No person who is tried for a criminal offence shall be compelled to give evidence at the trial.

(12) Subject as otherwise provided by this Constitution, a person shall not be convicted of a criminal offence unless that offence is defined and the penalty therefor is prescribed in a written law, and in this subsection, a written law refers to an Act of the National Assembly or a Law of a State, any subsidiary legislation or instrument under the provisions of a law.

37. The privacy of citizens, their homes, correspondence, telephone conversations and telegraphic communications is hereby guaranteed and protected.

38. (1) Every person shall be entitled to freedom of thought, conscience and religion, including freedom to change his religion or belief, and freedom (either alone or in community with others, and in public or in private) to manifest and propagate his religion or belief in worship, teaching, practice and observance.

(2) No person attending any place of education shall be required to receive religious instruction or to take part in or attend any religious ceremony or observance if such instruction ceremony or observance relates to a religion other than his own, or religion not approved by his parent or guardian.

(3) No religious community or denomination shall be prevented from providing religious instruction for pupils of that community or denomination in any place of education maintained wholly by that community or denomination.

(4) Nothing in this section shall entitle any person to form, take part in the activity or be a member of a secret society.

39. (1) Every person shall be entitled to freedom of expression, including freedom to hold opinions and to receive and impart ideas and information without interference.

(2) Without prejudice to the generality of subsection (1) of this section, every person shall be entitled to own, establish and operate any medium for the dissemination of information, ideas and opinions:

Provided that no person, other than the Government of the Federation or of a State or any other person or body authorised by the President on the fulfilment of conditions laid down by an Act of the National

Assembly, shall own, establish or operate a television or wireless broadcasting station for, any purpose whatsoever.

(3) Nothing in this section shall invalidate any law that is reasonably justifiable in a democratic society -

(a) for the purpose of preventing the disclosure. of information received in confidence, maintaining the authority and independence of courts or regulating telephony, wireless broadcasting, television or the exhibition of cinematograph films; or

(b) imposing restrictions upon persons holding office under the Government of the Federation or of a State, members of the armed forces of the Federation or members of the Nigeria Police Force or other Government security services or agencies established by law.

40. Every person shall be entitled to assemble freely and associate with other persons, and in particular he may form or belong to any political party, trade union or any other association for the protection of his interests:

Provided that the provisions of this section shall not derogate from the powers conferred by this Constitution on the Independent National Electoral Commission with respect to political parties to which that Commission does not accord recognition.

41. (1) Every citizen of Nigeria is entitled to move freely throughout Nigeria and to reside in any part thereof, and no citizen of Nigeria shall be expelled from Nigeria or refused entry thereby or exit therefrom.

(2) Nothing in subsection (1) of this section shall invalidate any law that is reasonably justifiable in a democratic society-

(a) imposing restrictions on the residence or movement of any person who has committed or is reasonably suspected to have committed a criminal offence in order to prevent him from leaving Nigeria; or

(b) providing for the removal of any person from Nigeria to any other country to:-

(i) be tried outside Nigeria for any criminal offence, or

(ii) undergo imprisonment outside Nigeria in execution of the sentence of a court of law in respect of a criminal offence of which he has been found guilty:

Provided that there is reciprocal agreement between Nigeria and such other country in relation to such matter.

42. (1) A citizen of Nigeria of a particular community, ethnic group, place of origin, sex, religion or political opinion shall not, by reason only that he is such a person:-

(a) be subjected either expressly by, or in the practical application of, any law in force in Nigeria or any executive or administrative action of the government, to disabilities or restrictions to which citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions are not made subject; or

(b) be accorded either expressly by, or in the practical application of, any law in force in Nigeria or any such executive or administrative action, any privilege or advantage that is not accorded to citizens of Nigeria of other communities, ethnic groups, places of origin, sex, religions or political opinions.

(2) No citizen of Nigeria shall be subjected to any disability or deprivation merely by reason of the circumstances of his birth.

(3) Nothing in subsection (1) of this section shall invalidate any law by reason only that the law imposes restrictions with respect to the appointment of any person to any office under the State or as a member of the armed forces of the Federation or member of the Nigeria Police Forces or to an office in the service of a body, corporate established directly by any law in force in Nigeria.

43. Subject to the provisions of this Constitution, every citizen of Nigeria shall have the right to acquire and own immovable property anywhere in Nigeria.

44. (1) No moveable property or any interest in an immovable property shall be taken possession of compulsorily and no right over or interest in any such property shall be acquired compulsorily in any part of Nigeria except in the manner and for the purposes prescribed by a law that, among other things -

(a) requires the prompt payment of compensation therefore and

(b) gives to any person claiming such compensation a right of access for the determination of his interest in the property and the amount of compensation to a court of law or tribunal or body having jurisdiction in that part of Nigeria.

(2) Nothing in subsection (1) of this section shall be construed as affecting any general law.

(a) for the imposition or enforcement of any tax, rate or duty;

(b) for the imposition of penalties or forfeiture for breach of any law, whether under civil process or after conviction for an offence;

(c) relating to leases, tenancies, mortgages, charges, bills of sale or any other rights or obligations arising out of contracts.

(d) relating to the vesting and administration of property of persons adjudged or otherwise declared bankrupt or insolvent, of persons of unsound mind or deceased persons, and of corporate or unincorporate bodies in the course of being wound-up;

(e) relating to the execution of judgements or orders of court;

(f) providing for the taking of possession of property that is in a dangerous state or is injurious to the health of human beings, plants or animals;

(g) relating to enemy property;

(h) relating to trusts and trustees;

(i) relating to limitation of actions;

(j) relating to property vested in bodies corporate directly established by any law in force in Nigeria;

(k) relating to the temporary taking of possession of property for the purpose of any examination, investigation or enquiry;

(l) providing for the carrying out of work on land for the purpose of soil-conservation; or

(m) subject to prompt payment of compensation for damage to buildings, economic trees or crops, providing for any authority or person to enter, survey or dig any land, or to lay, install or erect poles, cables, wires, pipes, or other conductors or structures on any land, in order to provide or maintain the supply or distribution of energy, fuel, water, sewage, telecommunication services or other public facilities or public utilities.

(3) Notwithstanding the foregoing provisions of this section, the entire property in and control of all minerals, mineral oils and natural gas in under or upon any land in Nigeria or in, under or upon the territorial waters and the Exclusive Economic Zone of Nigeria shall vest in the Government of the Federation and shall be managed in such manner as may be prescribed by the National Assembly.

45. (1) Nothing in sections 37, 38, 39, 40 and 41 of this Constitution shall invalidate any law that is reasonably justifiable in a democratic society

(a) in the interest of defence, public safety, public order, public morality or public health; or

(b) for the purpose of protecting the rights and freedom or other persons

(2) An act of the National Assembly shall not be invalidated by reason only that it provides for the taking, during periods of emergency, of measures that derogate from the provisions of section 33 or 35 of this Constitution; but no such measures shall be taken in pursuance of any such act during any period of emergency save to the extent that those measures are reasonably justifiable for the purpose of dealing with the situation that exists during that period of emergency:

Provided that nothing in this section shall authorise any derogation from the provisions of section 33 of this Constitution, except in respect of death resulting from acts of war or authorise any derogation from the provisions of section 36(8) of this Constitution.

(3) In this section, a " period of emergency" means any period during which there is in force a Proclamation of a state of emergency declared by the President in exercise of the powers conferred on him under section 305 of this Constitution.

46. (1) Any person who alleges that any of the provisions of this Chapter has been, is being or likely to be contravened in any State in relation to him may apply to a High Court in that State for redress.

(2) Subject to the provisions of this Constitution, a High Court shall have original jurisdiction to hear and determine any application made to it in pursuance of this section and may make such orders, issue such writs and give such directions as it may consider appropriate for the purpose of enforcement or securing the enforcing within that State of any right to which the person who makes the application may be entitled under this Chapter.

(3) The Chief Justice of Nigeria may make rules with respect to the practice and procedure of a High Court for the purposes of this section.

(4) The National Assembly -

(a) may confer upon a High Court such powers in addition to those conferred by this section as may appear to the National Assembly to be necessary or desirable for the purpose of enabling the court more effectively to exercise the jurisdiction conferred upon it by this section; and

(b) shall make provisions-

(i) for the rendering of financial assistance to any indigent citizen of Nigeria where his right under this Chapter has been infringed or with a view to enabling him to engage the services of a legal practitioner to prosecute his claim, and

(ii) for ensuring that allegations of infringement of such rights are substantial and the requirement or need for financial or legal aid is real.